

NO. 80704-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition of:

JEFFREY BROOKS,

Petitioner.

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ON MOTION FOR DISCRETIONARY REVIEW FROM THE  
COURT OF APPEALS, DIVISION ONE

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PETITIONER'S ANSWER TO BRIEF OF AMICUS CURIAE

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A. ARGUMENT

The Washington Association of Prosecuting Attorneys (WAPA) has filed an amicus brief in this matter principally contending the Court of Appeals incorrectly interpreted RCW 9.94A.715 in State v. Linerud, 147 Wn.App. 944, 197 P.3d 1224 (2008). First, recent legislation will soon render the State's contention moot, as RCW 9.94A.715 has been repealed effective August 1, 2009. Second, the legislature's recent amendments demonstrate the incorrectness of the State's reading of RCW 9.94.715.

On April 8, 2009, Governor Christine Gregoire signed Substitute Senate Bill 5190. Ch. 28, Laws 2009. Attached at Appendix A1-A53. Section 42(2) of that bill repeals RCW 9.94.715. A53. That bill will take effect August 1, 2009. Id.

On May 6, 2009, Governor Gregoire signed Engrossed Substitute Senate Bill 5288. Attached at Appendix A54-A102.

ESSB 5288, Section 5(8) amends RCW 9.94A.701 to add:

The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provide in RCW 9A.20.021.

A88. ESSB 5288, Section 20, directs that amendment, as well as the remainder of the bill, is retroactive to all cases in which a community custody term was imposed and as not yet been completed. A101. ESSB 5288 is effective August 1, 2008. Id.<sup>1</sup>

Further, ESSB 5288, Section 7 amends RCW 9.94A.707(1) to provide that community custody begins “upon completion of the term of confinement [or] at the time of sentencing if no term of confinement is ordered.” A90. Section 7 eliminates the provision that community custody begins “at such time as the offender is transferred to community custody in lieu of earned early release.” A90.

Thus, as of August 1, 2009 it will not matter whether Linerud correctly interpreted the provisions of RCW 9.94.715, as the amended provisions of RCW 9.94A.701(8) will require a reduction in the term of community custody in all cases.

Beyond that, these amendments undercut WAPA’s contention that Linerud’s interpretation of the RCW 9.94A.715 is

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<sup>1</sup> Governor Gregoire issued a partial veto of the Bill striking the emergency clause in Section 18 which sought to enact portions of the bill immediately, while the remainder would take effect make August 1, 2009. The Veto message is attached at Appendix A103. The Governor’s veto strikes the entirety of Section 18 including the August 1, 2009, effective date for those portions of the bill not subject to the emergency clause. However, the Governor’s veto message indicates the bill be implemented on August 1, 2009.

incorrect. WAPA acknowledges RCW 9.94A.715 presently directs the sentencing court to impose either “a range of months, or the period of earned early release.” Brief of Amicus at 4. Yet despite the clear directive to trial courts, and the use of the word “or,” WAPA maintains this language does not require the trial court to choose either option. Instead, WAPA makes the same contention the State raised in its Second Supplemental Brief, that the statute allows a third option; that the court may impose a community custody term of a period of months, which, coupled with the term of confinement, exceeds the statutory maximum, so long as DOC is directed not to require the defendant serve the full length of both terms.


To be sure, that option is not expressed in the plain language of the statute as it presently exists. Instead this supposed third option exists because the State and WAPA believe the “purpose” of the SRA is to ensure an offender serves the maximum possible term of confinement as well as the maximum possible term of community custody. RCW 9.94.505(5) suggests that is not the legislature’s goal. Moreover the Legislature’s recent amendment of RCW 9.94A.701 demonstrates the maximization of punishment is not among the purposes of the SRA.

WAPA's brief, like the State's before it, reads RCW 9.94A.715 in a vacuum without accounting for the directive of RCW 9.94.505(5) that the sentence imposed shall not have a combined term of confinement and community custody which exceeds the statutory maximum for the offense. As Mr. Brooks has made clear, even the amended sentence violates this directive. To the extent it matters, Linerud properly interpreted the provisions of RCW 9.94A.715.

B. CONCLUSION

For the reasons above, and those set forth in Mr. Brooks's prior briefs, the "remedy" provided in the commissioner's ruling is no remedy at all. The remedy fails to comply with the terms of RCW 9.94A.505, fails to impose a determinate sentence, and violates the Separation of Powers doctrine. This Court should reverse Mr. Brooks's sentence and remand his case for imposition of a determinate sentence.

Respectfully submitted this 11<sup>th</sup> day of May, 2009.

  
GREGORY C. LINK – 25228  
Washington Appellate Project  
Attorney for Petitioner

## **APPENDIX**



CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5190

Chapter 28, Laws of 2009

61st Legislature  
2009 Regular Session

OFFENDER SENTENCING--TECHNICAL CORRECTIONS

EFFECTIVE DATE: 08/01/09

Passed by the Senate February 26, 2009  
YEAS 47 NAYS 0

BRAD OWEN

\_\_\_\_\_  
President of the Senate

Passed by the House March 30, 2009  
YEAS 97 NAYS 0

FRANK CHOPP

\_\_\_\_\_  
Speaker of the House of Representatives

Approved April 8, 2009, 3:35 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5190 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
Secretary

FILED

April 9, 2009

Secretary of State  
State of Washington

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SUBSTITUTE SENATE BILL 5190

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Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, Regala, and Shin; by request of Statute Law Committee and Sentencing Guidelines Commission)

READ FIRST TIME 02/02/09.

1       AN ACT Relating to technical corrections to ensure accurate  
2 sentences for offenders; amending RCW 2.24.040, 9.41.045, 9.92.151,  
3 9.94A.190, 9.94A.505, 9.94A.633, 9.94A.6332, 9.94A.670, 9.94A.701,  
4 9.94A.703, 9.94A.704, 9.94A.731, 9.94A.771, 9.94A.835, 9.94A.850,  
5 9.94B.030, 9.94B.060, 9.94B.070, 9.95.011, 9.95.017, 9.95.055,  
6 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.140, 9.95.425,  
7 9.95.900, 9A.76.115, 13.40.135, 72.09.335, 72.09.340, 72.09.370,  
8 72.09.714, 72.09.716, 72.09.718, and 72.09.720; reenacting and amending  
9 RCW 9.94A.030; adding new sections to chapter 9.94A RCW; adding a new  
10 section to chapter 9.94B RCW; recodifying RCW 9.94A.602, 9.94A.605, and  
11 9.94A.771; repealing RCW 9.94A.545 and 9.94A.715; and providing an  
12 effective date.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

14       Sec. 1. RCW 2.24.040 and 2000 c 73 s 1 are each amended to read as  
15 follows:

16       Such court commissioner shall have power, authority, and  
17 jurisdiction, concurrent with the superior court and the judge thereof,  
18 in the following particulars:

1 (1) To hear and determine all matters in probate, to make and issue  
2 all proper orders therein, and to issue citations in all cases where  
3 same are authorized by the probate statutes of this state.

4 (2) To grant and enter defaults and enter judgment thereon.

5 (3) To issue temporary restraining orders and temporary  
6 injunctions, and to fix and approve bonds thereon.

7 (4) To act as referee in all matters and actions referred to him or  
8 her by the superior court as such, with all the powers now conferred  
9 upon referees by law.

10 (5) To hear and determine all proceedings supplemental to  
11 execution, with all the powers conferred upon the judge of the superior  
12 court in such matters.

13 (6) To hear and determine all petitions for the adoption of  
14 children and for the dissolution of incorporations.

15 (7) To hear and determine all applications for the commitment of  
16 any person to the hospital for the insane, with all the powers of the  
17 superior court in such matters: PROVIDED, That in cases where a jury  
18 is demanded, same shall be referred to the superior court for trial.

19 (8) To hear and determine all complaints for the commitments of  
20 minors with all powers conferred upon the superior court in such  
21 matters.

22 (9) To hear and determine ex parte and uncontested civil matters of  
23 any nature.

24 (10) To grant adjournments, administer oaths, preserve order,  
25 compel attendance of witnesses, and to punish for contempts in the  
26 refusal to obey or the neglect of the court commissioner's lawful  
27 orders made in any matter before the court commissioner as fully as the  
28 judge of the superior court.

29 (11) To take acknowledgments and proofs of deeds, mortgages and all  
30 other instruments requiring acknowledgment under the laws of this  
31 state, and to take affidavits and depositions in all cases.

32 (12) To provide an official seal, upon which shall be engraved the  
33 words "Court Commissioner," and the name of the county for which he or  
34 she may be appointed, and to authenticate his official acts therewith  
35 in all cases where same is necessary.

36 (13) To charge and collect, for his or her own use, the same fees  
37 for the official performance of official acts mentioned in subsections

1 (4) and (11) of this section as are provided by law for referees and  
2 notaries public.

3 (14) To hear and determine small claims appeals as provided in  
4 chapter 12.36 RCW.

5 (15) In adult criminal cases, to preside over arraignments,  
6 preliminary appearances, initial extradition hearings, and  
7 noncompliance proceedings pursuant to RCW ((9.94A.634)) 9.94A.6333 or  
8 9.94B.040; accept pleas if authorized by local court rules; appoint  
9 counsel; make determinations of probable cause; set, amend, and review  
10 conditions of pretrial release; set bail; set trial and hearing dates;  
11 authorize continuances; and accept waivers of the right to speedy  
12 trial.

13 **Sec. 2.** RCW 9.41.045 and 1991 c 221 s 1 are each amended to read  
14 as follows:

15 As a sentence condition and requirement, offenders under the  
16 supervision of the department of corrections pursuant to chapter 9.94A  
17 RCW shall not own, use, or possess firearms or ammunition. In addition  
18 to any penalty imposed pursuant to RCW 9.41.040 when applicable,  
19 offenders found to be in actual or constructive possession of firearms  
20 or ammunition shall be subject to the appropriate violation process and  
21 sanctions as provided for in RCW ((9.94A.634)) 9.94A.633, 9.94A.716, or  
22 9.94A.737. Firearms or ammunition owned, used, or possessed by  
23 offenders may be confiscated by community corrections officers and  
24 turned over to the Washington state patrol for disposal as provided in  
25 RCW 9.41.098.

26 **Sec. 3.** RCW 9.92.151 and 2004 c 176 s 5 are each amended to read  
27 as follows:

28 (1) Except as provided in subsection (2) of this section, the  
29 sentence of a prisoner confined in a county jail facility for a felony,  
30 gross misdemeanor, or misdemeanor conviction may be reduced by earned  
31 release credits in accordance with procedures that shall be developed  
32 and promulgated by the correctional agency having jurisdiction. The  
33 earned early release time shall be for good behavior and good  
34 performance as determined by the correctional agency having  
35 jurisdiction. Any program established pursuant to this section shall  
36 allow an offender to earn early release credits for presentence

1 incarceration. The correctional agency shall not credit the offender  
2 with earned early release credits in advance of the offender actually  
3 earning the credits. In the case of an offender convicted of a serious  
4 violent offense or a sex offense that is a class A felony committed on  
5 or after July 1, 1990, the aggregate earned early release time may not  
6 exceed fifteen percent of the sentence. In no other case may the  
7 aggregate earned early release time exceed one-third of the total  
8 sentence.

9 (2) An offender serving a term of confinement imposed under RCW  
10 9.94A.670(~~((4))~~) (5)(a) is not eligible for earned release credits  
11 under this section.

12 **Sec. 4.** RCW 9.94A.030 and 2008 c 276 s 309, 2008 c 231 s 23, 2008  
13 c 230 s 2, and 2008 c 7 s 1 are each reenacted and amended to read as  
14 follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

17 (1) "Board" means the indeterminate sentence review board created  
18 under chapter 9.95 RCW.

19 (2) "Collect," or any derivative thereof, "collect and remit," or  
20 "collect and deliver," when used with reference to the department,  
21 means that the department, either directly or through a collection  
22 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
23 and enforcing the offender's sentence with regard to the legal  
24 financial obligation, receiving payment thereof from the offender, and,  
25 consistent with current law, delivering daily the entire payment to the  
26 superior court clerk without depositing it in a departmental account.

27 (3) "Commission" means the sentencing guidelines commission.

28 (4) "Community corrections officer" means an employee of the  
29 department who is responsible for carrying out specific duties in  
30 supervision of sentenced offenders and monitoring of sentence  
31 conditions.

32 (5) "Community custody" means that portion of an offender's  
33 sentence of confinement in lieu of earned release time or imposed as  
34 part of a sentence and served in the community subject to controls  
35 placed on the offender's movement and activities by the department.

36 (6) "Community custody range" means the minimum and maximum period

1 of community custody included as part of a sentence under RCW  
2 ((9.94A.715)) 9.94A.701, as established by the commission or the  
3 legislature under RCW 9.94A.850.

4 (7) "Community protection zone" means the area within eight hundred  
5 eighty feet of the facilities and grounds of a public or private  
6 school.

7 (8) "Community restitution" means compulsory service, without  
8 compensation, performed for the benefit of the community by the  
9 offender.

10 (9) "Confinement" means total or partial confinement.

11 (10) "Conviction" means an adjudication of guilt pursuant to  
12 Title((s)) 10 or 13 RCW and includes a verdict of guilty, a finding of  
13 guilty, and acceptance of a plea of guilty.

14 (11) "Crime-related prohibition" means an order of a court  
15 prohibiting conduct that directly relates to the circumstances of the  
16 crime for which the offender has been convicted, and shall not be  
17 construed to mean orders directing an offender affirmatively to  
18 participate in rehabilitative programs or to otherwise perform  
19 affirmative conduct. However, affirmative acts necessary to monitor  
20 compliance with the order of a court may be required by the department.

21 (12) "Criminal history" means the list of a defendant's prior  
22 convictions and juvenile adjudications, whether in this state, in  
23 federal court, or elsewhere.

24 (a) The history shall include, where known, for each conviction (i)  
25 whether the defendant has been placed on probation and the length and  
26 terms thereof; and (ii) whether the defendant has been incarcerated and  
27 the length of incarceration.

28 (b) A conviction may be removed from a defendant's criminal history  
29 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
30 a similar out-of-state statute, or if the conviction has been vacated  
31 pursuant to a governor's pardon.

32 (c) The determination of a defendant's criminal history is distinct  
33 from the determination of an offender score. A prior conviction that  
34 was not included in an offender score calculated pursuant to a former  
35 version of the sentencing reform act remains part of the defendant's  
36 criminal history.

37 (13) "Criminal street gang" means any ongoing organization,  
38 association, or group of three or more persons, whether formal or

1 informal, having a common name or common identifying sign or symbol,  
2 having as one of its primary activities the commission of criminal  
3 acts, and whose members or associates individually or collectively  
4 engage in or have engaged in a pattern of criminal street gang  
5 activity. This definition does not apply to employees engaged in  
6 concerted activities for their mutual aid and protection, or to the  
7 activities of labor and bona fide nonprofit organizations or their  
8 members or agents.

9 (14) "Criminal street gang associate or member" means any person  
10 who actively participates in any criminal street gang and who  
11 intentionally promotes, furthers, or assists in any criminal act by the  
12 criminal street gang.

13 (15) "Criminal street gang-related offense" means any felony or  
14 misdemeanor offense, whether in this state or elsewhere, that is  
15 committed for the benefit of, at the direction of, or in association  
16 with any criminal street gang, or is committed with the intent to  
17 promote, further, or assist in any criminal conduct by the gang, or is  
18 committed for one or more of the following reasons:

19 (a) To gain admission, prestige, or promotion within the gang;

20 (b) To increase or maintain the gang's size, membership, prestige,  
21 dominance, or control in any geographical area;

22 (c) To exact revenge or retribution for the gang or any member of  
23 the gang;

24 (d) To obstruct justice, or intimidate or eliminate any witness  
25 against the gang or any member of the gang;

26 (e) To directly or indirectly cause any benefit, aggrandizement,  
27 gain, profit, or other advantage for the gang, its reputation,  
28 influence, or membership; or

29 (f) To provide the gang with any advantage in, or any control or  
30 dominance over any criminal market sector, including, but not limited  
31 to, manufacturing, delivering, or selling any controlled substance  
32 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
33 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
34 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
35 (chapter 9.68 RCW).

36 (16) "Day fine" means a fine imposed by the sentencing court that  
37 equals the difference between the offender's net daily income and the

1 reasonable obligations that the offender has for the support of the  
2 offender and any dependents.

3 (17) "Day reporting" means a program of enhanced supervision  
4 designed to monitor the offender's daily activities and compliance with  
5 sentence conditions, and in which the offender is required to report  
6 daily to a specific location designated by the department or the  
7 sentencing court.

8 (18) "Department" means the department of corrections.

9 (19) "Determinate sentence" means a sentence that states with  
10 exactitude the number of actual years, months, or days of total  
11 confinement, of partial confinement, of community custody, the number  
12 of actual hours or days of community restitution work, or dollars or  
13 terms of a legal financial obligation. The fact that an offender  
14 through earned release can reduce the actual period of confinement  
15 shall not affect the classification of the sentence as a determinate  
16 sentence.

17 (20) "Disposable earnings" means that part of the earnings of an  
18 offender remaining after the deduction from those earnings of any  
19 amount required by law to be withheld. For the purposes of this  
20 definition, "earnings" means compensation paid or payable for personal  
21 services, whether denominated as wages, salary, commission, bonuses, or  
22 otherwise, and, notwithstanding any other provision of law making the  
23 payments exempt from garnishment, attachment, or other process to  
24 satisfy a court-ordered legal financial obligation, specifically  
25 includes periodic payments pursuant to pension or retirement programs,  
26 or insurance policies of any type, but does not include payments made  
27 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
28 or Title 74 RCW.

29 (21) "Drug offender sentencing alternative" is a sentencing option  
30 available to persons convicted of a felony offense other than a violent  
31 offense or a sex offense and who are eligible for the option under RCW  
32 9.94A.660.

33 (22) "Drug offense" means:

34 (a) Any felony violation of chapter 69.50 RCW except possession of  
35 a controlled substance (RCW 69.50.4013) or forged prescription for a  
36 controlled substance (RCW 69.50.403);

37 (b) Any offense defined as a felony under federal law that relates



1 to the possession, manufacture, distribution, or transportation of a  
2 controlled substance; or

3 (c) Any out-of-state conviction for an offense that under the laws  
4 of this state would be a felony classified as a drug offense under (a)  
5 of this subsection.

6 (23) "Earned release" means earned release from confinement as  
7 provided in RCW 9.94A.728.

8 (24) "Escape" means:

9 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
10 first degree (RCW 9A.76.110), escape in the second degree (RCW  
11 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
12 willful failure to return from work release (RCW 72.65.070), or willful  
13 failure to be available for supervision by the department while in  
14 community custody (RCW 72.09.310); or

15 (b) Any federal or out-of-state conviction for an offense that  
16 under the laws of this state would be a felony classified as an escape  
17 under (a) of this subsection.

18 (25) "Felony traffic offense" means:

19 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
20 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
21 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
22 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
23 felony physical control of a vehicle while under the influence of  
24 intoxicating liquor or any drug (RCW 46.61.504(6)); or

25 (b) Any federal or out-of-state conviction for an offense that  
26 under the laws of this state would be a felony classified as a felony  
27 traffic offense under (a) of this subsection.

28 (26) "Fine" means a specific sum of money ordered by the sentencing  
29 court to be paid by the offender to the court over a specific period of  
30 time.

31 (27) "First-time offender" means any person who has no prior  
32 convictions for a felony and is eligible for the first-time offender  
33 waiver under RCW 9.94A.650.

34 (28) "Home detention" means a program of partial confinement  
35 available to offenders wherein the offender is confined in a private  
36 residence subject to electronic surveillance.

37 (29) "Legal financial obligation" means a sum of money that is  
38 ordered by a superior court of the state of Washington for legal

1 financial obligations which may include restitution to the victim,  
2 statutorily imposed crime victims' compensation fees as assessed  
3 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
4 court-appointed attorneys' fees, and costs of defense, fines, and any  
5 other financial obligation that is assessed to the offender as a result  
6 of a felony conviction. Upon conviction for vehicular assault while  
7 under the influence of intoxicating liquor or any drug, RCW  
8 46.61.522(1)(b), or vehicular homicide while under the influence of  
9 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
10 obligations may also include payment to a public agency of the expense  
11 of an emergency response to the incident resulting in the conviction,  
12 subject to RCW 38.52.430.

13 (30) "Most serious offense" means any of the following felonies or  
14 a felony attempt to commit any of the following felonies:

15 (a) Any felony defined under any law as a class A felony or  
16 criminal solicitation of or criminal conspiracy to commit a class A  
17 felony;

18 (b) Assault in the second degree;

19 (c) Assault of a child in the second degree;

20 (d) Child molestation in the second degree;

21 (e) Controlled substance homicide;

22 (f) Extortion in the first degree;

23 (g) Incest when committed against a child under age fourteen;

24 (h) Indecent liberties;

25 (i) Kidnapping in the second degree;

26 (j) Leading organized crime;

27 (k) Manslaughter in the first degree;

28 (l) Manslaughter in the second degree;

29 (m) Promoting prostitution in the first degree;

30 (n) Rape in the third degree;

31 (o) Robbery in the second degree;

32 (p) Sexual exploitation;

33 (q) Vehicular assault, when caused by the operation or driving of  
34 a vehicle by a person while under the influence of intoxicating liquor  
35 or any drug or by the operation or driving of a vehicle in a reckless  
36 manner;

37 (r) Vehicular homicide, when proximately caused by the driving of

1 any vehicle by any person while under the influence of intoxicating  
2 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
3 any vehicle in a reckless manner;

4 (s) Any other class B felony offense with a finding of sexual  
5 motivation;

6 (t) Any other felony with a deadly weapon verdict under RCW  
7 9.94A.602 (as recodified by this act);

8 (u) Any felony offense in effect at any time prior to December 2,  
9 1993, that is comparable to a most serious offense under this  
10 subsection, or any federal or out-of-state conviction for an offense  
11 that under the laws of this state would be a felony classified as a  
12 most serious offense under this subsection;

13 (v)(i) A prior conviction for indecent liberties under RCW  
14 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
15 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
16 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
17 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

18 (ii) A prior conviction for indecent liberties under RCW  
19 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
20 if: (A) The crime was committed against a child under the age of  
21 fourteen; or (B) the relationship between the victim and perpetrator is  
22 included in the definition of indecent liberties under RCW  
23 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
24 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
25 through July 27, 1997;

26 (w) Any out-of-state conviction for a felony offense with a finding  
27 of sexual motivation if the minimum sentence imposed was ten years or  
28 more; provided that the out-of-state felony offense must be comparable  
29 to a felony offense under Title 9 or 9A RCW and the out-of-state  
30 definition of sexual motivation must be comparable to the definition of  
31 sexual motivation contained in this section.

32 (31) "Nonviolent offense" means an offense which is not a violent  
33 offense.

34 (32) "Offender" means a person who has committed a felony  
35 established by state law and is eighteen years of age or older or is  
36 less than eighteen years of age but whose case is under superior court  
37 jurisdiction under RCW 13.04.030 or has been transferred by the

1 appropriate juvenile court to a criminal court pursuant to RCW  
2 13.40.110. Throughout this chapter, the terms "offender" and  
3 "defendant" are used interchangeably.

4 (33) "Partial confinement" means confinement for no more than one  
5 year in a facility or institution operated or utilized under contract  
6 by the state or any other unit of government, or, if home detention or  
7 work crew has been ordered by the court, in an approved residence, for  
8 a substantial portion of each day with the balance of the day spent in  
9 the community. Partial confinement includes work release, home  
10 detention, work crew, and a combination of work crew and home  
11 detention.

12 (34) "Pattern of criminal street gang activity" means:

13 (a) The commission, attempt, conspiracy, or solicitation of, or any  
14 prior juvenile adjudication of or adult conviction of, two or more of  
15 the following criminal street gang-related offenses:

16 (i) Any "serious violent" felony offense as defined in RCW  
17 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of  
18 a Child 1 (RCW 9A.36.120);

19 (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding  
20 Assault of a Child 2 (RCW 9A.36.130);

21 (iii) Deliver or Possession with Intent to Deliver a Controlled  
22 Substance (chapter 69.50 RCW);

23 (iv) Any violation of the firearms and dangerous weapon act  
24 (chapter 9.41 RCW);

25 (v) Theft of a Firearm (RCW 9A.56.300);

26 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

27 (vii) Malicious Harassment (RCW 9A.36.080);

28 (viii) Harassment where a subsequent violation or deadly threat is  
29 made (RCW 9A.46.020(2)(b));

30 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

31 (x) Any felony conviction by a person eighteen years of age or  
32 older with a special finding of involving a juvenile in a felony  
33 offense under RCW 9.94A.833;

34 (xi) Residential Burglary (RCW 9A.52.025);

35 (xii) Burglary 2 (RCW 9A.52.030);

36 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

37 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

38 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

1 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
2 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
3 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
4 9A.56.075);  
5 (xix) Extortion 1 (RCW 9A.56.120);  
6 (xx) Extortion 2 (RCW 9A.56.130);  
7 (xxi) Intimidating a Witness (RCW 9A.72.110);  
8 (xxii) Tampering with a Witness (RCW 9A.72.120);  
9 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
10 (xxiv) Coercion (RCW 9A.36.070);  
11 (xxv) Harassment (RCW 9A.46.020); or  
12 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

13 (b) That at least one of the offenses listed in (a) of this  
14 subsection shall have occurred after July 1, 2008;

15 (c) That the most recent committed offense listed in (a) of this  
16 subsection occurred within three years of a prior offense listed in (a)  
17 of this subsection; and

18 (d) Of the offenses that were committed in (a) of this subsection,  
19 the offenses occurred on separate occasions or were committed by two or  
20 more persons.

21 (35) "Persistent offender" is an offender who:

22 (a) (i) Has been convicted in this state of any felony considered a  
23 most serious offense; and

24 (ii) Has, before the commission of the offense under (a) of this  
25 subsection, been convicted as an offender on at least two separate  
26 occasions, whether in this state or elsewhere, of felonies that under  
27 the laws of this state would be considered most serious offenses and  
28 would be included in the offender score under RCW 9.94A.525; provided  
29 that of the two or more previous convictions, at least one conviction  
30 must have occurred before the commission of any of the other most  
31 serious offenses for which the offender was previously convicted; or

32 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
33 of a child in the first degree, child molestation in the first degree,  
34 rape in the second degree, rape of a child in the second degree, or  
35 indecent liberties by forcible compulsion; (B) any of the following  
36 offenses with a finding of sexual motivation: Murder in the first  
37 degree, murder in the second degree, homicide by abuse, kidnapping in  
38 the first degree, kidnapping in the second degree, assault in the first

1 degree, assault in the second degree, assault of a child in the first  
2 degree, assault of a child in the second degree, or burglary in the  
3 first degree; or (C) an attempt to commit any crime listed in this  
4 subsection (35)(b)(i); and

5 (ii) Has, before the commission of the offense under (b)(i) of this  
6 subsection, been convicted as an offender on at least one occasion,  
7 whether in this state or elsewhere, of an offense listed in (b)(i) of  
8 this subsection or any federal or out-of-state offense or offense under  
9 prior Washington law that is comparable to the offenses listed in  
10 (b)(i) of this subsection. A conviction for rape of a child in the  
11 first degree constitutes a conviction under (b)(i) of this subsection  
12 only when the offender was sixteen years of age or older when the  
13 offender committed the offense. A conviction for rape of a child in  
14 the second degree constitutes a conviction under (b)(i) of this  
15 subsection only when the offender was eighteen years of age or older  
16 when the offender committed the offense.

17 (36) "Predatory" means: (a) The perpetrator of the crime was a  
18 stranger to the victim, as defined in this section; (b) the perpetrator  
19 established or promoted a relationship with the victim prior to the  
20 offense and the victimization of the victim was a significant reason  
21 the perpetrator established or promoted the relationship; or (c) the  
22 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
23 in authority in any public or private school and the victim was a  
24 student of the school under his or her authority or supervision. For  
25 purposes of this subsection, "school" does not include home-based  
26 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
27 volunteer, or other person in authority in any recreational activity  
28 and the victim was a participant in the activity under his or her  
29 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
30 person in authority in any church or religious organization, and the  
31 victim was a member or participant of the organization under his or her  
32 authority.

33 (37) "Private school" means a school regulated under chapter  
34 28A.195 or 28A.205 RCW.

35 (38) "Public school" has the same meaning as in RCW 28A.150.010.

36 (39) "Restitution" means a specific sum of money ordered by the  
37 sentencing court to be paid by the offender to the court over a

1 specified period of time as payment of damages. The sum may include  
2 both public and private costs.

3 (40) "Risk assessment" means the application of an objective  
4 instrument supported by research and adopted by the department for the  
5 purpose of assessing an offender's risk of reoffense, taking into  
6 consideration the nature of the harm done by the offender, place and  
7 circumstances of the offender related to risk, the offender's  
8 relationship to any victim, and any information provided to the  
9 department by victims. The results of a risk assessment shall not be  
10 based on unconfirmed or unconfirmable allegations.

11 (41) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating  
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
14 while under the influence of intoxicating liquor or any drug (RCW  
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
16 attended vehicle (RCW 46.52.020(5)); or

17 (b) Any federal, out-of-state, county, or municipal conviction for  
18 an offense that under the laws of this state would be classified as a  
19 serious traffic offense under (a) of this subsection.

20 (42) "Serious violent offense" is a subcategory of violent offense  
21 and means:

22 (a)(i) Murder in the first degree;

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

29 (viii) Assault of a child in the first degree; or

30 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
31 commit one of these felonies; or

32 (b) Any federal or out-of-state conviction for an offense that  
33 under the laws of this state would be a felony classified as a serious  
34 violent offense under (a) of this subsection.

35 (43) "Sex offense" means:

36 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
37 RCW 9A.44.130(12);

38 (ii) A violation of RCW 9A.64.020;

1 (iii) A felony that is a violation of chapter 9.68A RCW other than  
2 RCW 9.68A.080; or

3 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
4 criminal solicitation, or criminal conspiracy to commit such crimes;

5 (b) Any conviction for a felony offense in effect at any time prior  
6 to July 1, 1976, that is comparable to a felony classified as a sex  
7 offense in (a) of this subsection;

8 (c) A felony with a finding of sexual motivation under RCW  
9 9.94A.835 or 13.40.135; or

10 (d) Any federal or out-of-state conviction for an offense that  
11 under the laws of this state would be a felony classified as a sex  
12 offense under (a) of this subsection.

13 (44) "Sexual motivation" means that one of the purposes for which  
14 the defendant committed the crime was for the purpose of his or her  
15 sexual gratification.

16 (45) "Standard sentence range" means the sentencing court's  
17 discretionary range in imposing a nonappealable sentence.

18 (46) "Statutory maximum sentence" means the maximum length of time  
19 for which an offender may be confined as punishment for a crime as  
20 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
21 crime, or other statute defining the maximum penalty for a crime.

22 (47) "Stranger" means that the victim did not know the offender  
23 twenty-four hours before the offense.

24 (48) "Total confinement" means confinement inside the physical  
25 boundaries of a facility or institution operated or utilized under  
26 contract by the state or any other unit of government for twenty-four  
27 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

28 (49) "Transition training" means written and verbal instructions  
29 and assistance provided by the department to the offender during the  
30 two weeks prior to the offender's successful completion of the work  
31 ethic camp program. The transition training shall include instructions  
32 in the offender's requirements and obligations during the offender's  
33 period of community custody.

34 (50) "Victim" means any person who has sustained emotional,  
35 psychological, physical, or financial injury to person or property as  
36 a direct result of the crime charged.

37 (51) "Violent offense" means:

38 (a) Any of the following felonies:



1 (i) Any felony defined under any law as a class A felony or an  
2 attempt to commit a class A felony;

3 (ii) Criminal solicitation of or criminal conspiracy to commit a  
4 class A felony;

5 (iii) Manslaughter in the first degree;

6 (iv) Manslaughter in the second degree;

7 (v) Indecent liberties if committed by forcible compulsion;

8 (vi) Kidnapping in the second degree;

9 (vii) Arson in the second degree;

10 (viii) Assault in the second degree;

11 (ix) Assault of a child in the second degree;

12 (x) Extortion in the first degree;

13 (xi) Robbery in the second degree;

14 (xii) Drive-by shooting;

15 (xiii) Vehicular assault, when caused by the operation or driving  
16 of a vehicle by a person while under the influence of intoxicating  
17 liquor or any drug or by the operation or driving of a vehicle in a  
18 reckless manner; and

19 (xiv) Vehicular homicide, when proximately caused by the driving of  
20 any vehicle by any person while under the influence of intoxicating  
21 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
22 any vehicle in a reckless manner;

23 (b) Any conviction for a felony offense in effect at any time prior  
24 to July 1, 1976, that is comparable to a felony classified as a violent  
25 offense in (a) of this subsection; and

26 (c) Any federal or out-of-state conviction for an offense that  
27 under the laws of this state would be a felony classified as a violent  
28 offense under (a) or (b) of this subsection.

29 (52) "Work crew" means a program of partial confinement consisting  
30 of civic improvement tasks for the benefit of the community that  
31 complies with RCW 9.94A.725.

32 (53) "Work ethic camp" means an alternative incarceration program  
33 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
34 the cost of corrections by requiring offenders to complete a  
35 comprehensive array of real-world job and vocational experiences,  
36 character-building work ethics training, life management skills  
37 development, substance abuse rehabilitation, counseling, literacy  
38 training, and basic adult education.

1 (54) "Work release" means a program of partial confinement  
2 available to offenders who are employed or engaged as a student in a  
3 regular course of study at school.

4 **Sec. 5.** RCW 9.94A.190 and 2001 2nd sp.s. c 12 s 313 are each  
5 amended to read as follows:

6 (1) A sentence that includes a term or terms of confinement  
7 totaling more than one year shall be served in a facility or  
8 institution operated, or utilized under contract, by the state. Except  
9 as provided in subsection (3) or (5) of this section, a sentence of not  
10 more than one year of confinement shall be served in a facility  
11 operated, licensed, or utilized under contract, by the county, or if  
12 home detention or work crew has been ordered by the court, in the  
13 residence of either the offender or a member of the offender's  
14 immediate family.

15 (2) If a county uses a state partial confinement facility for the  
16 partial confinement of a person sentenced to confinement for not more  
17 than one year, the county shall reimburse the state for the use of the  
18 facility as provided in this subsection. The office of financial  
19 management shall set the rate of reimbursement based upon the average  
20 per diem cost per offender in the facility. The office of financial  
21 management shall determine to what extent, if any, reimbursement shall  
22 be reduced or eliminated because of funds provided by the legislature  
23 to the department for the purpose of covering the cost of county use of  
24 state partial confinement facilities. The office of financial  
25 management shall reestablish reimbursement rates each even-numbered  
26 year.

27 (3) A person who is sentenced for a felony to a term of not more  
28 than one year, and who is committed or returned to incarceration in a  
29 state facility on another felony conviction, either under the  
30 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter  
31 shall serve all terms of confinement, including a sentence of not more  
32 than one year, in a facility or institution operated, or utilized under  
33 contract, by the state, consistent with the provisions of RCW  
34 9.94A.589.

35 (4) Notwithstanding any other provision of this section, a sentence  
36 imposed pursuant to RCW 9.94A.660 which has a standard sentence range

1 of over one year, regardless of length, shall be served in a facility  
2 or institution operated, or utilized under contract, by the state.

3 (5) Sentences imposed pursuant to RCW ((~~9.94A.712~~)) 9.94A.507 shall  
4 be served in a facility or institution operated, or utilized under  
5 contract, by the state.

6 **Sec. 6.** RCW 9.94A.505 and 2008 c 231 s 25 are each amended to read  
7 as follows:

8 (1) When a person is convicted of a felony, the court shall impose  
9 punishment as provided in this chapter.

10 (2)(a) The court shall impose a sentence as provided in the  
11 following sections and as applicable in the case:

12 (i) Unless another term of confinement applies, a sentence within  
13 the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

14 (ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

15 (iii) RCW 9.94A.570, relating to persistent offenders;

16 (iv) RCW 9.94A.540, relating to mandatory minimum terms;

17 (v) RCW 9.94A.650, relating to the first-time offender waiver;

18 (vi) RCW 9.94A.660, relating to the drug offender sentencing  
19 alternative;

20 (vii) RCW 9.94A.670, relating to the special sex offender  
21 sentencing alternative;

22 (viii) RCW ((~~9.94A.712~~)) 9.94A.507, relating to certain sex  
23 offenses;

24 (ix) RCW 9.94A.535, relating to exceptional sentences;

25 (x) RCW 9.94A.589, relating to consecutive and concurrent  
26 sentences;

27 (xi) RCW 9.94A.603, relating to felony driving while under the  
28 influence of intoxicating liquor or any drug and felony physical  
29 control of a vehicle while under the influence of intoxicating liquor  
30 or any drug.

31 (b) If a standard sentence range has not been established for the  
32 offender's crime, the court shall impose a determinate sentence which  
33 may include not more than one year of confinement; community  
34 restitution work; a term of community custody not to exceed one year;  
35 and/or other legal financial obligations. The court may impose a  
36 sentence which provides more than one year of confinement if the court

1 finds reasons justifying an exceptional sentence as provided in RCW  
2 9.94A.535.

3 (3) If the court imposes a sentence requiring confinement of thirty  
4 days or less, the court may, in its discretion, specify that the  
5 sentence be served on consecutive or intermittent days. A sentence  
6 requiring more than thirty days of confinement shall be served on  
7 consecutive days. Local jail administrators may schedule court-ordered  
8 intermittent sentences as space permits.

9 (4) If a sentence imposed includes payment of a legal financial  
10 obligation, it shall be imposed as provided in RCW 9.94A.750,  
11 9.94A.753, 9.94A.760, and 43.43.7541.

12 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a  
13 court may not impose a sentence providing for a term of confinement or  
14 community custody that exceeds the statutory maximum for the crime as  
15 provided in chapter 9A.20 RCW.

16 (6) The sentencing court shall give the offender credit for all  
17 confinement time served before the sentencing if that confinement was  
18 solely in regard to the offense for which the offender is being  
19 sentenced.

20 (7) The court shall order restitution as provided in RCW 9.94A.750  
21 and 9.94A.753.

22 (8) As a part of any sentence, the court may impose and enforce  
23 crime-related prohibitions and affirmative conditions as provided in  
24 this chapter.

25 (9) In any sentence of partial confinement, the court may require  
26 the offender to serve the partial confinement in work release, in a  
27 program of home detention, on work crew, or in a combined program of  
28 work crew and home detention.

29 **Sec. 7.** RCW 9.94A.633 and 2008 c 231 s 15 are each amended to read  
30 as follows:

31 (1)(a) An offender who violates any condition or requirement of a  
32 sentence may be sanctioned with up to sixty days' confinement for each  
33 violation.

34 (b) In lieu of confinement, an offender may be sanctioned with work  
35 release, home detention with electronic monitoring, work crew,  
36 community restitution, inpatient treatment, daily reporting, curfew,

1 educational or counseling sessions, supervision enhanced through  
2 electronic monitoring, or any other sanctions available in the  
3 community.

4 (2) If an offender was under community custody pursuant to one of  
5 the following statutes, the offender may be sanctioned as follows:

6 (a) If the offender was transferred to community custody in lieu of  
7 earned early release in accordance with RCW 9.94A.728(2), the offender  
8 may be transferred to a more restrictive confinement status to serve up  
9 to the remaining portion of the sentence, less credit for any period  
10 actually spent in community custody or in detention awaiting  
11 disposition of an alleged violation.

12 (b) If the offender was sentenced under the drug offender  
13 sentencing alternative set out in RCW 9.94A.660, the offender may be  
14 sanctioned in accordance with that section.

15 (c) If the offender was sentenced under the special sexual offender  
16 sentencing alternative set out in RCW 9.94A.670, the suspended sentence  
17 may be revoked and the offender committed to serve the original  
18 sentence of confinement.

19 (d) If the offender was sentenced to a work ethic camp pursuant to  
20 RCW 9.94A.690, the offender may be reclassified to serve the unexpired  
21 term of his or her sentence in total confinement.

22 (e) If a sex offender was sentenced pursuant to RCW ((~~9.94A.712~~))  
23 9.94A.507, the offender may be transferred to a more restrictive  
24 confinement status to serve up to the remaining portion of the  
25 sentence, less credit for any period actually spent in community  
26 custody or in detention awaiting disposition of an alleged violation.

27 **Sec. 8.** RCW 9.94A.6332 and 2008 c 231 s 18 are each amended to  
28 read as follows:

29 The procedure for imposing sanctions for violations of sentence  
30 conditions or requirements is as follows:

31 (1) If the offender was sentenced under the drug offender  
32 sentencing alternative, any sanctions shall be imposed by the  
33 department or the court pursuant to RCW 9.94A.660.

34 (2) If the offender was sentenced under the special sexual offender  
35 sentencing alternative, any sanctions shall be imposed by the  
36 department or the court pursuant to RCW 9.94A.670.

1 (3) If a sex offender was sentenced pursuant to RCW ((9.94A.712))  
2 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW  
3 9.95.435.

4 (4) In any other case, if the offender is being supervised by the  
5 department, any sanctions shall be imposed by the department pursuant  
6 to RCW 9.94A.737.

7 (5) If the offender is not being supervised by the department, any  
8 sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

9 **Sec. 9.** RCW 9.94A.670 and 2008 c 231 s 31 are each amended to read  
10 as follows:

11 (1) Unless the context clearly requires otherwise, the definitions  
12 in this subsection apply to this section only.

13 (a) "Sex offender treatment provider" or "treatment provider" means  
14 a certified sex offender treatment provider or a certified affiliate  
15 sex offender treatment provider as defined in RCW 18.155.020.

16 (b) "Substantial bodily harm" means bodily injury that involves a  
17 temporary but substantial disfigurement, or that causes a temporary but  
18 substantial loss or impairment of the function of any body part or  
19 organ, or that causes a fracture of any body part or organ.

20 (c) "Victim" means any person who has sustained emotional,  
21 psychological, physical, or financial injury to person or property as  
22 a result of the crime charged. "Victim" also means a parent or  
23 guardian of a victim who is a minor child unless the parent or guardian  
24 is the perpetrator of the offense.

25 (2) An offender is eligible for the special sex offender sentencing  
26 alternative if:

27 (a) The offender has been convicted of a sex offense other than a  
28 violation of RCW 9A.44.050 or a sex offense that is also a serious  
29 violent offense. If the conviction results from a guilty plea, the  
30 offender must, as part of his or her plea of guilty, voluntarily and  
31 affirmatively admit he or she committed all of the elements of the  
32 crime to which the offender is pleading guilty. This alternative is  
33 not available to offenders who plead guilty to the offense charged  
34 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d  
35 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

36 (b) The offender has no prior convictions for a sex offense as

1 defined in RCW 9.94A.030 or any other felony sex offenses in this or  
2 any other state;

3 (c) The offender has no prior adult convictions for a violent  
4 offense that was committed within five years of the date the current  
5 offense was committed;

6 (d) The offense did not result in substantial bodily harm to the  
7 victim;

8 (e) The offender had an established relationship with, or  
9 connection to, the victim such that the sole connection with the victim  
10 was not the commission of the crime; and

11 (f) The offender's standard sentence range for the offense includes  
12 the possibility of confinement for less than eleven years.

13 (3) If the court finds the offender is eligible for this  
14 alternative, the court, on its own motion or the motion of the state or  
15 the offender, may order an examination to determine whether the  
16 offender is amenable to treatment.

17 (a) The report of the examination shall include at a minimum the  
18 following:

19 (i) The offender's version of the facts and the official version of  
20 the facts;

21 (ii) The offender's offense history;

22 (iii) An assessment of problems in addition to alleged deviant  
23 behaviors;

24 (iv) The offender's social and employment situation; and

25 (v) Other evaluation measures used.

26 The report shall set forth the sources of the examiner's  
27 information.

28 (b) The examiner shall assess and report regarding the offender's  
29 amenability to treatment and relative risk to the community. A  
30 proposed treatment plan shall be provided and shall include, at a  
31 minimum:

32 (i) Frequency and type of contact between offender and therapist;

33 (ii) Specific issues to be addressed in the treatment and  
34 description of planned treatment modalities;

35 (iii) Monitoring plans, including any requirements regarding living  
36 conditions, lifestyle requirements, and monitoring by family members  
37 and others;

38 (iv) Anticipated length of treatment; and

1 (v) Recommended crime-related prohibitions and affirmative  
2 conditions, which must include, to the extent known, an identification  
3 of specific activities or behaviors that are precursors to the  
4 offender's offense cycle, including, but not limited to, activities or  
5 behaviors such as viewing or listening to pornography or use of alcohol  
6 or controlled substances.

7 (c) The court on its own motion may order, or on a motion by the  
8 state shall order, a second examination regarding the offender's  
9 amenability to treatment. The examiner shall be selected by the party  
10 making the motion. The offender shall pay the cost of any second  
11 examination ordered unless the court finds the defendant to be indigent  
12 in which case the state shall pay the cost.

13 (4) After receipt of the reports, the court shall consider whether  
14 the offender and the community will benefit from use of this  
15 alternative, consider whether the alternative is too lenient in light  
16 of the extent and circumstances of the offense, consider whether the  
17 offender has victims in addition to the victim of the offense, consider  
18 whether the offender is amenable to treatment, consider the risk the  
19 offender would present to the community, to the victim, or to persons  
20 of similar age and circumstances as the victim, and consider the  
21 victim's opinion whether the offender should receive a treatment  
22 disposition under this section. The court shall give great weight to  
23 the victim's opinion whether the offender should receive a treatment  
24 disposition under this section. If the sentence imposed is contrary to  
25 the victim's opinion, the court shall enter written findings stating  
26 its reasons for imposing the treatment disposition. The fact that the  
27 offender admits to his or her offense does not, by itself, constitute  
28 amenability to treatment. If the court determines that this  
29 alternative is appropriate, the court shall then impose a sentence or,  
30 pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, a minimum term of sentence,  
31 within the standard sentence range. If the sentence imposed is less  
32 than eleven years of confinement, the court may suspend the execution  
33 of the sentence as provided in this section.

34 (5) As conditions of the suspended sentence, the court must impose  
35 the following:

36 (a) A term of confinement of up to twelve months or the maximum  
37 term within the standard range, whichever is less. The court may order  
38 the offender to serve a term of confinement greater than twelve months



1 or the maximum term within the standard range based on the presence of  
2 an aggravating circumstance listed in RCW 9.94A.535(3). In no case  
3 shall the term of confinement exceed the statutory maximum sentence for  
4 the offense. The court may order the offender to serve all or part of  
5 his or her term of confinement in partial confinement. An offender  
6 sentenced to a term of confinement under this subsection is not  
7 eligible for earned release under RCW 9.92.151 or 9.94A.728.

8 (b) A term of community custody equal to the length of the  
9 suspended sentence, the length of the maximum term imposed pursuant to  
10 RCW ((~~9.94A.712~~)) 9.94A.507, or three years, whichever is greater, and  
11 require the offender to comply with any conditions imposed by the  
12 department under RCW 9.94A.703.

13 (c) Treatment for any period up to five years in duration. The  
14 court, in its discretion, shall order outpatient sex offender treatment  
15 or inpatient sex offender treatment, if available. A community mental  
16 health center may not be used for such treatment unless it has an  
17 appropriate program designed for sex offender treatment. The offender  
18 shall not change sex offender treatment providers or treatment  
19 conditions without first notifying the prosecutor, the community  
20 corrections officer, and the court. If any party or the court objects  
21 to a proposed change, the offender shall not change providers or  
22 conditions without court approval after a hearing.

23 (d) Specific prohibitions and affirmative conditions relating to  
24 the known precursor activities or behaviors identified in the proposed  
25 treatment plan under subsection (3)(b)(v) of this section or identified  
26 in an annual review under subsection (8)(b) of this section.

27 (6) As conditions of the suspended sentence, the court may impose  
28 one or more of the following:

29 (a) Crime-related prohibitions;

30 (b) Require the offender to devote time to a specific employment or  
31 occupation;

32 (c) Require the offender to remain within prescribed geographical  
33 boundaries and notify the court or the community corrections officer  
34 prior to any change in the offender's address or employment;

35 (d) Require the offender to report as directed to the court and a  
36 community corrections officer;

37 (e) Require the offender to pay all court-ordered legal financial  
38 obligations as provided in RCW 9.94A.030;

1 (f) Require the offender to perform community restitution work; or  
2 (g) Require the offender to reimburse the victim for the cost of  
3 any counseling required as a result of the offender's crime.

4 (7) At the time of sentencing, the court shall set a treatment  
5 termination hearing for three months prior to the anticipated date for  
6 completion of treatment.

7 (8) (a) The sex offender treatment provider shall submit quarterly  
8 reports on the offender's progress in treatment to the court and the  
9 parties. The report shall reference the treatment plan and include at  
10 a minimum the following: Dates of attendance, offender's compliance  
11 with requirements, treatment activities, the offender's relative  
12 progress in treatment, and any other material specified by the court at  
13 sentencing.

14 (b) The court shall conduct a hearing on the offender's progress in  
15 treatment at least once a year. At least fourteen days prior to the  
16 hearing, notice of the hearing shall be given to the victim. The  
17 victim shall be given the opportunity to make statements to the court  
18 regarding the offender's supervision and treatment. At the hearing,  
19 the court may modify conditions of community custody including, but not  
20 limited to, crime-related prohibitions and affirmative conditions  
21 relating to activities and behaviors identified as part of, or relating  
22 to precursor activities and behaviors in, the offender's offense cycle  
23 or revoke the suspended sentence.

24 (9) At least fourteen days prior to the treatment termination  
25 hearing, notice of the hearing shall be given to the victim. The  
26 victim shall be given the opportunity to make statements to the court  
27 regarding the offender's supervision and treatment. Prior to the  
28 treatment termination hearing, the treatment provider and community  
29 corrections officer shall submit written reports to the court and  
30 parties regarding the offender's compliance with treatment and  
31 monitoring requirements, and recommendations regarding termination from  
32 treatment, including proposed community custody conditions. The court  
33 may order an evaluation regarding the advisability of termination from  
34 treatment by a sex offender treatment provider who may not be the same  
35 person who treated the offender under subsection (5) of this section or  
36 any person who employs, is employed by, or shares profits with the  
37 person who treated the offender under subsection (5) of this section  
38 unless the court has entered written findings that such evaluation is

1 in the best interest of the victim and that a successful evaluation of  
2 the offender would otherwise be impractical. The offender shall pay  
3 the cost of the evaluation. At the treatment termination hearing the  
4 court may: (a) Modify conditions of community custody, and either (b)  
5 terminate treatment, or (c) extend treatment in two-year increments for  
6 up to the remaining period of community custody.

7 (10) (a) If a violation of conditions other than a second violation  
8 of the prohibitions or affirmative conditions relating to precursor  
9 behaviors or activities imposed under subsection (5)(d) or (8)(b) of  
10 this section occurs during community custody, the department shall  
11 either impose sanctions as provided for in RCW 9.94A.633(1) or refer  
12 the violation to the court and recommend revocation of the suspended  
13 sentence as provided for in subsections (7) and (9) of this section.

14 (b) If a second violation of the prohibitions or affirmative  
15 conditions relating to precursor behaviors or activities imposed under  
16 subsection (5)(d) or (8)(b) of this section occurs during community  
17 custody, the department shall refer the violation to the court and  
18 recommend revocation of the suspended sentence as provided in  
19 subsection (11) of this section.

20 (11) The court may revoke the suspended sentence at any time during  
21 the period of community custody and order execution of the sentence if:  
22 (a) The offender violates the conditions of the suspended sentence, or  
23 (b) the court finds that the offender is failing to make satisfactory  
24 progress in treatment. All confinement time served during the period  
25 of community custody shall be credited to the offender if the suspended  
26 sentence is revoked.

27 (12) If the offender violates a requirement of the sentence that is  
28 not a condition of the suspended sentence pursuant to subsection (5) or  
29 (6) of this section, the department may impose sanctions pursuant to  
30 RCW 9.94A.633(1).

31 (13) The offender's sex offender treatment provider may not be the  
32 same person who examined the offender under subsection (3) of this  
33 section or any person who employs, is employed by, or shares profits  
34 with the person who examined the offender under subsection (3) of this  
35 section, unless the court has entered written findings that such  
36 treatment is in the best interests of the victim and that successful  
37 treatment of the offender would otherwise be impractical. Examinations  
38 and treatment ordered pursuant to this subsection shall only be

1 conducted by certified sex offender treatment providers or certified  
2 affiliate sex offender treatment providers under chapter 18.155 RCW  
3 unless the court finds that:

4 (a) The offender has already moved to another state or plans to  
5 move to another state for reasons other than circumventing the  
6 certification requirements; or

7 (b) (i) No certified sex offender treatment providers or certified  
8 affiliate sex offender treatment providers are available for treatment  
9 within a reasonable geographical distance of the offender's home; and

10 (ii) The evaluation and treatment plan comply with this section and  
11 the rules adopted by the department of health.

12 (14) If the offender is less than eighteen years of age when the  
13 charge is filed, the state shall pay for the cost of initial evaluation  
14 and treatment.

15 **Sec. 10.** RCW 9.94A.701 and 2008 c 231 s 7 are each amended to read  
16 as follows:

17 (1) If an offender is sentenced to the custody of the department  
18 for one of the following crimes, the court shall impose a term of  
19 community custody for the community custody range established under RCW  
20 9.94A.850 or up to the period of earned release awarded pursuant to RCW  
21 9.94A.728 (1) and (2), whichever is longer:

22 (a) A sex offense not sentenced under RCW ((9.94A.712)) 9.94A.507;

23 (b) A violent offense;

24 (c) A crime against persons under RCW 9.94A.411(2);

25 (d) An offense involving the unlawful possession of a firearm under  
26 RCW 9.41.040, where the offender is a criminal street gang member or  
27 associate;

28 (e) A felony offender under chapter 69.50 or 69.52 RCW.

29 (2) If an offender is sentenced to a term of confinement of one  
30 year or less for a violation of RCW 9A.44.130(11) (a), the court shall  
31 impose a term of community custody for the community custody range  
32 established under RCW 9.94A.850 or up to the period of earned release  
33 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

34 (3) If an offender is sentenced under the drug offender sentencing  
35 alternative, the court shall impose community custody as provided in  
36 RCW 9.94A.660.

1 (4) If an offender is sentenced under the special sexual offender  
2 sentencing alternative, the court shall impose community custody as  
3 provided in RCW 9.94A.670.

4 (5) If an offender is sentenced to a work ethic camp, the court  
5 shall impose community custody as provided in RCW 9.94A.690.

6 (6) If a sex offender is sentenced as a nonpersistent offender  
7 pursuant to RCW ((9.94A.712)) 9.94A.507, the court shall impose  
8 community custody as provided in that section.

9 (7) If the offender is a criminal street gang associate or member  
10 and is found guilty of unlawful possession of a firearm under RCW  
11 9.41.040, the court shall impose a term of community custody under  
12 subsection (1)(d) of this section.

13 **Sec. 11.** RCW 9.94A.703 and 2008 c 231 s 9 are each amended to read  
14 as follows:

15 When a court sentences a person to a term of community custody, the  
16 court shall impose conditions of community custody as provided in this  
17 section.

18 (1) **Mandatory conditions.** As part of any term of community  
19 custody, the court shall:

20 (a) Require the offender to inform the department of court-ordered  
21 treatment upon request by the department;

22 (b) Require the offender to comply with any conditions imposed by  
23 the department under RCW 9.94A.704;

24 (c) If the offender was sentenced under RCW ((9.94A.712)) 9.94A.507  
25 for an offense listed in RCW ((9.94A.712)) 9.94A.507(1)(a), and the  
26 victim of the offense was under eighteen years of age at the time of  
27 the offense, prohibit the offender from residing in a community  
28 protection zone.

29 (2) **Waivable conditions.** Unless waived by the court, as part of  
30 any term of community custody, the court shall order an offender to:

31 (a) Report to and be available for contact with the assigned  
32 community corrections officer as directed;

33 (b) Work at department-approved education, employment, or community  
34 restitution, or any combination thereof;

35 (c) Refrain from possessing or consuming controlled substances  
36 except pursuant to lawfully issued prescriptions;

37 (d) Pay supervision fees as determined by the department; and

1 (e) Obtain prior approval of the department for the offender's  
2 residence location and living arrangements.

3 (3) **Discretionary conditions.** As part of any term of community  
4 custody, the court may order an offender to:

5 (a) Remain within, or outside of, a specified geographical  
6 boundary;

7 (b) Refrain from direct or indirect contact with the victim of the  
8 crime or a specified class of individuals;

9 (c) Participate in crime-related treatment or counseling services;

10 (d) Participate in rehabilitative programs or otherwise perform  
11 affirmative conduct reasonably related to the circumstances of the  
12 offense, the offender's risk of reoffending, or the safety of the  
13 community;

14 (e) Refrain from consuming alcohol; or

15 (f) Comply with any crime-related prohibitions.

16 (4) **Special conditions.**

17 (a) In sentencing an offender convicted of a crime of domestic  
18 violence, as defined in RCW 10.99.020, if the offender has a minor  
19 child, or if the victim of the offense for which the offender was  
20 convicted has a minor child, the court may order the offender to  
21 participate in a domestic violence perpetrator program approved under  
22 RCW 26.50.150.

23 (b)(i) In sentencing an offender convicted of an alcohol or drug-  
24 related traffic offense, the court shall require the offender to  
25 complete a diagnostic evaluation by an alcohol or drug dependency  
26 agency approved by the department of social and health services or a  
27 qualified probation department, defined under RCW 46.61.516, that has  
28 been approved by the department of social and health services. If the  
29 offense was pursuant to chapter 46.61 RCW, the report shall be  
30 forwarded to the department of licensing. If the offender is found to  
31 have an alcohol or drug problem that requires treatment, the offender  
32 shall complete treatment in a program approved by the department of  
33 social and health services under chapter 70.96A RCW. If the offender  
34 is found not to have an alcohol or drug problem that requires  
35 treatment, the offender shall complete a course in an information  
36 school approved by the department of social and health services under  
37 chapter 70.96A RCW. The offender shall pay all costs for any

1 evaluation, education, or treatment required by this section, unless  
2 the offender is eligible for an existing program offered or approved by  
3 the department of social and health services.

4 (ii) For purposes of this section, "alcohol or drug-related traffic  
5 offense" means the following: Driving while under the influence as  
6 defined by RCW 46.61.502, actual physical control while under the  
7 influence as defined by RCW 46.61.504, vehicular homicide as defined by  
8 RCW 46.61.520(1)(a), vehicular assault as defined by RCW  
9 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050,  
10 or assault by watercraft as defined by RCW 79A.60.060.

11 (iii) This subsection (4)(b) does not require the department of  
12 social and health services to add new treatment or assessment  
13 facilities nor affect its use of existing programs and facilities  
14 authorized by law.

15 **Sec. 12.** RCW 9.94A.704 and 2008 c 231 s 10 are each amended to  
16 read as follows:

17 (1) Every person who is sentenced to a period of community custody  
18 shall report to and be placed under the supervision of the department,  
19 subject to RCW 9.94A.501.

20 (2)(a) The department shall assess the offender's risk of reoffense  
21 and may establish and modify additional conditions of community custody  
22 based upon the risk to community safety.

23 (b) Within the funds available for community custody, the  
24 department shall determine conditions and duration of community custody  
25 on the basis of risk to community safety, and shall supervise offenders  
26 during community custody on the basis of risk to community safety and  
27 conditions imposed by the court. The secretary shall adopt rules to  
28 implement the provisions of this subsection (2)(b).

29 (3) If the offender is supervised by the department, the department  
30 shall at a minimum instruct the offender to:

31 (a) Report as directed to a community corrections officer;

32 (b) Remain within prescribed geographical boundaries;

33 (c) Notify the community corrections officer of any change in the  
34 offender's address or employment;

35 (d) Pay the supervision fee assessment; and

36 (e) Disclose the fact of supervision to any mental health or  
37 chemical dependency treatment provider, as required by RCW 9.94A.722.

1 (4) The department may require the offender to participate in  
2 rehabilitative programs, or otherwise perform affirmative conduct, and  
3 to obey all laws.

4 (5) If the offender was sentenced pursuant to a conviction for a  
5 sex offense, the department may impose electronic monitoring. Within  
6 the resources made available by the department for this purpose, the  
7 department shall carry out any electronic monitoring using the most  
8 appropriate technology given the individual circumstances of the  
9 offender. As used in this section, "electronic monitoring" means the  
10 monitoring of an offender using an electronic offender tracking system  
11 including, but not limited to, a system using radio frequency or active  
12 or passive global positioning system technology.

13 (6) The department may not impose conditions that are contrary to  
14 those ordered by the court and may not contravene or decrease court-  
15 imposed conditions.

16 (7)(a) The department shall notify the offender in writing of any  
17 additional conditions or modifications.

18 (b) By the close of the next business day after receiving notice of  
19 a condition imposed or modified by the department, an offender may  
20 request an administrative review under rules adopted by the department.  
21 The condition shall remain in effect unless the reviewing officer finds  
22 that it is not reasonably related to the crime of conviction, the  
23 offender's risk of reoffending, or the safety of the community.

24 (8) The department may require offenders to pay for special  
25 services rendered including electronic monitoring, day reporting, and  
26 telephone reporting, dependent on the offender's ability to pay. The  
27 department may pay for these services for offenders who are not able to  
28 pay.

29 (9)(a) When a sex offender has been sentenced pursuant to RCW  
30 ~~((9.94A.712))~~ 9.94A.507, the ~~((board shall exercise the authority~~  
31 ~~prescribed in RCW 9.95.420 through 9.95.435.~~

32 ~~((b) The))~~ department shall assess the offender's risk of recidivism  
33 and shall recommend to the board any additional or modified conditions  
34 based upon the offender's risk to community safety and may recommend  
35 affirmative conduct or electronic monitoring consistent with  
36 subsections (4) through (6) of this section.

37 (b) The board may impose conditions in addition to court-ordered



1 conditions. The board must consider and may impose department-  
2 recommended conditions.

3 (c) By the close of the next business day, after receiving notice  
4 of a condition imposed by the board or the department, an offender may  
5 request an administrative hearing under rules adopted by the board.  
6 The condition shall remain in effect unless the hearing examiner finds  
7 that it is not reasonably related to any of the following:

8 (i) The crime of conviction;

9 (ii) The offender's risk of reoffending;

10 (iii) The safety of the community.

11 (d) If the department finds that an emergency exists requiring the  
12 immediate imposition of additional conditions in order to prevent the  
13 offender from committing a crime, the department may impose such  
14 conditions. The department may not impose conditions that are contrary  
15 to those set by the board or the court and may not contravene or  
16 decrease court-imposed or board-imposed conditions. Conditions imposed  
17 under this subsection shall take effect immediately after notice to the  
18 offender by personal service, but shall not remain in effect longer  
19 than seven working days unless approved by the board.

20 (10) In setting, modifying, and enforcing conditions of community  
21 custody, the department shall be deemed to be performing a  
22 quasi-judicial function.

23 **Sec. 13.** RCW 9.94A.731 and 2003 c 254 s 2 are each amended to read  
24 as follows:

25 (1) An offender sentenced to a term of partial confinement shall be  
26 confined in the facility for at least eight hours per day or, if  
27 serving a work crew sentence shall comply with the conditions of that  
28 sentence as set forth in RCW 9.94A.030(~~((+31+))~~) and 9.94A.725. The  
29 offender shall be required as a condition of partial confinement to  
30 report to the facility at designated times. During the period of  
31 partial confinement, an offender may be required to comply with crime-  
32 related prohibitions and affirmative conditions imposed by the court or  
33 the department pursuant to this chapter.

34 (2) An offender in a county jail ordered to serve all or part of a  
35 term of less than one year in work release, work crew, or a program of  
36 home detention who violates the rules of the work release facility,  
37 work crew, or program of home detention or fails to remain employed or

1 enrolled in school may be transferred to the appropriate county  
2 detention facility without further court order but shall, upon request,  
3 be notified of the right to request an administrative hearing on the  
4 issue of whether or not the offender failed to comply with the order  
5 and relevant conditions. Pending such hearing, or in the absence of a  
6 request for the hearing, the offender shall serve the remainder of the  
7 term of confinement as total confinement. This subsection shall not  
8 affect transfer or placement of offenders committed to the department.

9 (3) Participation in work release shall be conditioned upon the  
10 offender attending work or school at regularly defined hours and  
11 abiding by the rules of the work release facility.

12 **Sec. 14.** RCW 9.94A.771 and 1989 c 252 s 18 are each amended to  
13 read as follows:

14 For those individuals who, as a condition and term of their  
15 sentence imposed on or before July 1, 1989, have had financial  
16 obligations imposed, and who are not in compliance with the court order  
17 requiring payment of that legal financial obligation, no action shall  
18 be brought before the court from July 1, 1989, through and including  
19 December 31, 1989, to impose a penalty for their failure to pay. All  
20 individuals who, after December 31, 1989, have not taken the  
21 opportunity to bring their legal financial obligation current, shall be  
22 proceeded against pursuant to RCW (~~(9.94A.634)~~) 9.94B.040.

23 **Sec. 15.** RCW 9.94A.835 and 2006 c 123 s 2 are each amended to read  
24 as follows:

25 (1) The prosecuting attorney shall file a special allegation of  
26 sexual motivation in every criminal case, felony, gross misdemeanor, or  
27 misdemeanor, other than sex offenses as defined in RCW 9.94A.030(~~((+38)~~  
28 ~~(a) or (c)~~)) when sufficient admissible evidence exists, which, when  
29 considered with the most plausible, reasonably foreseeable defense that  
30 could be raised under the evidence, would justify a finding of sexual  
31 motivation by a reasonable and objective fact finder.

32 (2) In a criminal case wherein there has been a special allegation  
33 the state shall prove beyond a reasonable doubt that the accused  
34 committed the crime with a sexual motivation. The court shall make a  
35 finding of fact of whether or not a sexual motivation was present at  
36 the time of the commission of the crime, or if a jury trial is had, the

1 jury shall, if it finds the defendant guilty, also find a special  
2 verdict as to whether or not the defendant committed the crime with a  
3 sexual motivation. This finding shall not be applied to sex offenses  
4 as defined in RCW 9.94A.030(~~((38)(a) or (c))~~)).

5 (3) The prosecuting attorney shall not withdraw the special  
6 allegation of sexual motivation without approval of the court through  
7 an order of dismissal of the special allegation. The court shall not  
8 dismiss this special allegation unless it finds that such an order is  
9 necessary to correct an error in the initial charging decision or  
10 unless there are evidentiary problems which make proving the special  
11 allegation doubtful.

12 NEW SECTION. Sec. 16. A new section is added to chapter 9.94A RCW  
13 under the subchapter heading "Special Allegations" to read as follows:

14 In a criminal case in which the defendant has been convicted of  
15 unlawful possession of a firearm under RCW 9.41.040, and there has been  
16 a special allegation pleaded and proven by a preponderance of the  
17 evidence that the accused is a criminal street gang member or associate  
18 as defined in RCW 9.94A.030, the court shall make a finding of fact of  
19 the special allegation, or if a jury trial is had, the jury shall, if  
20 it finds the defendant guilty, also find a special verdict as to  
21 whether or not the accused was a criminal street gang member or  
22 associate during the commission of the crime.

23 Sec. 17. RCW 9.94A.850 and 2005 c 282 s 19 are each amended to  
24 read as follows:

25 (1) A sentencing guidelines commission is established as an agency  
26 of state government.

27 (2) The legislature finds that the commission, having accomplished  
28 its original statutory directive to implement this chapter, and having  
29 expertise in sentencing practice and policies, shall:

30 (a) Evaluate state sentencing policy, to include whether the  
31 sentencing ranges and standards are consistent with and further:

32 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

33 (ii) The intent of the legislature to emphasize confinement for the  
34 violent offender and alternatives to confinement for the nonviolent  
35 offender.

1 The commission shall provide the governor and the legislature with  
2 its evaluation and recommendations under this subsection not later than  
3 December 1, 1996, and every two years thereafter;

4 (b) Recommend to the legislature revisions or modifications to the  
5 standard sentence ranges, state sentencing policy, prosecuting  
6 standards, and other standards. If implementation of the revisions or  
7 modifications would result in exceeding the capacity of correctional  
8 facilities, then the commission shall accompany its recommendation with  
9 an additional list of standard sentence ranges which are consistent  
10 with correction capacity;

11 (c) Study the existing criminal code and from time to time make  
12 recommendations to the legislature for modification;

13 (d) (i) Serve as a clearinghouse and information center for the  
14 collection, preparation, analysis, and dissemination of information on  
15 state and local adult and juvenile sentencing practices; (ii) develop  
16 and maintain a computerized adult and juvenile sentencing information  
17 system by individual superior court judge consisting of offender,  
18 offense, history, and sentence information entered from judgment and  
19 sentence forms for all adult felons; and (iii) conduct ongoing research  
20 regarding adult and juvenile sentencing guidelines, use of total  
21 confinement and alternatives to total confinement, plea bargaining, and  
22 other matters relating to the improvement of the adult criminal justice  
23 system and the juvenile justice system;

24 (e) Assume the powers and duties of the juvenile disposition  
25 standards commission after June 30, 1996;

26 (f) Evaluate the effectiveness of existing disposition standards  
27 and related statutes in implementing policies set forth in RCW  
28 13.40.010 generally, specifically review the guidelines relating to the  
29 confinement of minor and first-time offenders as well as the use of  
30 diversion, and review the application of current and proposed juvenile  
31 sentencing standards and guidelines for potential adverse impacts on  
32 the sentencing outcomes of racial and ethnic minority youth;

33 (g) Solicit the comments and suggestions of the juvenile justice  
34 community concerning disposition standards, and make recommendations to  
35 the legislature regarding revisions or modifications of the standards.  
36 The evaluations shall be submitted to the legislature on December 1 of  
37 each odd-numbered year. The department of social and health services  
38 shall provide the commission with available data concerning the

1 implementation of the disposition standards and related statutes and  
2 their effect on the performance of the department's responsibilities  
3 relating to juvenile offenders, and with recommendations for  
4 modification of the disposition standards. The administrative office  
5 of the courts shall provide the commission with available data on  
6 diversion, including the use of youth court programs, and dispositions  
7 of juvenile offenders under chapter 13.40 RCW; and

8 (h) Not later than December 1, 1997, and at least every two years  
9 thereafter, based on available information, report to the governor and  
10 the legislature on:

11 (i) Racial disproportionality in juvenile and adult sentencing,  
12 and, if available, the impact that diversions, such as youth courts,  
13 have on racial disproportionality in juvenile prosecution,  
14 adjudication, and sentencing;

15 (ii) The capacity of state and local juvenile and adult facilities  
16 and resources; and

17 (iii) Recidivism information on adult and juvenile offenders.

18 (3) Each of the commission's recommended standard sentence ranges  
19 shall include one or more of the following: Total confinement, partial  
20 confinement, community supervision, community restitution, and a fine.

21 (4) The standard sentence ranges of total and partial confinement  
22 under this chapter, except as provided in RCW 9.94A.517, are subject to  
23 the following limitations:

24 (a) If the maximum term in the range is one year or less, the  
25 minimum term in the range shall be no less than one-third of the  
26 maximum term in the range, except that if the maximum term in the range  
27 is ninety days or less, the minimum term may be less than one-third of  
28 the maximum;

29 (b) If the maximum term in the range is greater than one year, the  
30 minimum term in the range shall be no less than seventy-five percent of  
31 the maximum term in the range, except that for murder in the second  
32 degree in seriousness level XIV under RCW 9.94A.510, the minimum term  
33 in the range shall be no less than fifty percent of the maximum term in  
34 the range; and

35 (c) The maximum term of confinement in a range may not exceed the  
36 statutory maximum for the crime as provided in RCW 9A.20.021.

37 (5)(a) ~~((Not later than December 31, 1999, the commission shall~~  
38 ~~propose to the legislature the initial community custody ranges to be~~

1 ~~included in sentences under RCW 9.94A.715 for crimes committed on or~~  
2 ~~after July 1, 2000.))~~ Not later than December 31 of each year, the  
3 commission may propose modifications to the community custody ranges to  
4 be included in sentences under RCW 9.94A.701. The ranges shall be  
5 based on the principles in RCW 9.94A.010, and shall take into account  
6 the funds available to the department for community custody. The  
7 minimum term in each range shall not be less than one-half of the  
8 maximum term.

9 (b) The legislature may, by enactment of a legislative bill, adopt  
10 or modify the community custody ranges proposed by the commission. If  
11 the legislature fails to adopt or modify the initial ranges in its next  
12 regular session after they are proposed, the proposed ranges shall take  
13 effect without legislative approval for crimes committed on or after  
14 July 1, 2000.

15 (c) When the commission proposes modifications to ranges pursuant  
16 to this subsection, the legislature may, by enactment of a bill, adopt  
17 or modify the ranges proposed by the commission for crimes committed on  
18 or after July 1 of the year after they were proposed. Unless the  
19 legislature adopts or modifies the commission's proposal in its next  
20 regular session, the proposed ranges shall not take effect.

21 (6) The commission shall exercise its duties under this section in  
22 conformity with chapter 34.05 RCW.

23 **Sec. 18.** RCW 9.94B.030 and 1988 c 153 s 8 are each amended to read  
24 as follows:

25 If the offender violates any condition of postrelease supervision,  
26 a hearing may be conducted in the same manner as provided in RCW  
27 ~~((9.94A.634))~~ 9.94B.040. Jurisdiction shall be with the court of the  
28 county in which the offender was sentenced. However, the court may  
29 order a change of venue to the offender's county of residence or where  
30 the violation occurred, for the purpose of holding a violation hearing.

31 After the hearing, the court may order the offender to be confined  
32 for up to sixty days per violation in the county jail. Reimbursement  
33 to a city or county for the care of offenders who are detained solely  
34 for violating a condition of postrelease supervision shall be under RCW  
35 70.48.440. A county shall be reimbursed for indigent defense costs for  
36 offenders who are detained solely for violating a condition of  
37 postrelease supervision in accordance with regulations to be

1 promulgated by the office of financial management. An offender may be  
2 held in jail at state expense pending the hearing, and any time served  
3 while awaiting the hearing shall be credited against confinement  
4 imposed for a violation. The court shall retain jurisdiction for the  
5 purpose of holding the violation hearing and imposing a sanction.

6 **Sec. 19.** RCW 9.94B.060 and 2003 c 379 s 5 are each amended to read  
7 as follows:

8 Except for persons sentenced under RCW ((~~9.94A.700~~)) 9.94B.050(2)  
9 or ((~~9.94A.710~~)) 9.94B.070, when a court sentences a person to a term  
10 of total confinement to the custody of the department for a violent  
11 offense, any crime against persons under RCW 9.94A.411(2), or any  
12 felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW  
13 9.94A.660, committed on or after July 25, 1999, but before July 1,  
14 2000, the court shall in addition to the other terms of the sentence,  
15 sentence the offender to a one-year term of community placement  
16 beginning either upon completion of the term of confinement or at such  
17 time as the offender is transferred to community custody in lieu of  
18 earned release in accordance with RCW 9.94A.728 (1) and (2). When the  
19 court sentences the offender under this section to the statutory  
20 maximum period of confinement, then the community placement portion of  
21 the sentence shall consist entirely of such community custody to which  
22 the offender may become eligible, in accordance with RCW 9.94A.728 (1)  
23 and (2). Any period of community custody actually served shall be  
24 credited against the community placement portion of the sentence.  
25 Except as provided in RCW 9.94A.501, the department shall supervise any  
26 sentence of community placement or community custody imposed under this  
27 section.

28 **Sec. 20.** RCW 9.94B.070 and 2000 c 28 s 24 are each amended to read  
29 as follows:

30 (1) When a court sentences a person to the custody of the  
31 department for an offense categorized as a sex offense, including those  
32 sex offenses also included in other offense categories, committed on or  
33 after June 6, 1996, and before July 1, 2000, the court shall, in  
34 addition to other terms of the sentence, sentence the offender to  
35 community custody for three years or up to the period of earned release  
36 awarded pursuant to RCW 9.94A.728, whichever is longer. The community

1 custody shall begin either upon completion of the term of confinement  
2 or at such time as the offender is transferred to community custody in  
3 lieu of earned release.

4 (2) Unless a condition is waived by the court, the terms of  
5 community custody imposed under this section shall be the same as those  
6 provided for in RCW ((~~9.94A.700~~)) 9.94B.050(4) and may include those  
7 provided for in RCW ((~~9.94A.700~~)) 9.94B.050(5). As part of any  
8 sentence that includes a term of community custody imposed under this  
9 section, the court shall also require the offender to comply with any  
10 conditions imposed by the department under RCW ((~~9.94A.720~~)) 9.94A.704.

11 (3) At any time prior to the completion of a sex offender's term of  
12 community custody, if the court finds that public safety would be  
13 enhanced, the court may impose and enforce an order extending any or  
14 all of the conditions imposed pursuant to this section for a period up  
15 to the maximum allowable sentence for the crime as it is classified in  
16 chapter 9A.20 RCW, regardless of the expiration of the offender's term  
17 of community custody. If a violation of a condition extended under  
18 this subsection occurs after the expiration of the offender's term of  
19 community custody, it shall be deemed a violation of the sentence for  
20 the purposes of RCW 9.94A.631 and may be punishable as contempt of  
21 court as provided for in RCW 7.21.040.

22 **Sec. 21.** RCW 9.95.011 and 2007 c 363 s 1 are each amended to read  
23 as follows:

24 (1) When the court commits a convicted person to the department of  
25 corrections on or after July 1, 1986, for an offense committed before  
26 July 1, 1984, the court shall, at the time of sentencing or revocation  
27 of probation, fix the minimum term. The term so fixed shall not exceed  
28 the maximum sentence provided by law for the offense of which the  
29 person is convicted.

30 The court shall attempt to set the minimum term reasonably  
31 consistent with the purposes, standards, and sentencing ranges adopted  
32 under RCW 9.94A.850, but the court is subject to the same limitations  
33 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through  
34 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The  
35 court's minimum term decision is subject to review to the same extent  
36 as a minimum term decision by the parole board before July 1, 1986.



1       Thereafter, the expiration of the minimum term set by the court  
2 minus any time credits earned under RCW 9.95.070 and 9.95.110  
3 constitutes the parole eligibility review date, at which time the board  
4 may consider the convicted person for parole under RCW 9.95.100 and  
5 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the  
6 board's authority to reduce or increase the minimum term, once set by  
7 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,  
8 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

9       (2) (a) Except as provided in (b) of this subsection, not less than  
10 ninety days prior to the expiration of the minimum term of a person  
11 sentenced under RCW (~~9.94A.712~~) 9.94A.507, for a sex offense  
12 committed on or after September 1, 2001, less any time credits  
13 permitted by statute, the board shall review the person for conditional  
14 release to community custody as provided in RCW 9.95.420. If the board  
15 does not release the person, it shall set a new minimum term not to  
16 exceed an additional five years. The board shall review the person  
17 again not less than ninety days prior to the expiration of the new  
18 minimum term.

19       (b) If at the time a person sentenced under RCW (~~9.94A.712~~)  
20 9.94A.507 for a sex offense committed on or after September 1, 2001,  
21 arrives at a department of corrections facility, the offender's minimum  
22 term has expired or will expire within one hundred twenty days of the  
23 offender's arrival, then no later than one hundred twenty days after  
24 the offender's arrival at a department of corrections facility, but  
25 after the board receives the results from the end of sentence review  
26 process and the recommendations for additional or modified conditions  
27 of community custody from the department, the board shall review the  
28 person for conditional release to community custody as provided in RCW  
29 9.95.420. If the board does not release the person, it shall set a new  
30 minimum term not to exceed an additional five years. The board shall  
31 review the person again not less than ninety days prior to the  
32 expiration of the new minimum term.

33       (c) In setting a new minimum term, the board may consider the  
34 length of time necessary for the offender to complete treatment and  
35 programming as well as other factors that relate to the offender's  
36 release under RCW 9.95.420. The board's rules shall permit an offender  
37 to petition for an earlier review if circumstances change or the board  
38 receives new information that would warrant an earlier review.

1       **Sec. 22.** RCW 9.95.017 and 2008 c 231 s 40 are each amended to read  
2 as follows:

3       (1) The board shall cause to be prepared criteria for duration of  
4 confinement, release on parole, and length of parole for persons  
5 committed to prison for crimes committed before July 1, 1984.

6       The proposed criteria should take into consideration RCW  
7 9.95.009(2). Before submission to the governor, the board shall  
8 solicit comments and review on their proposed criteria for parole  
9 release.

10       (2) Persons committed to the department of corrections and who are  
11 under the authority of the board for crimes committed on or after  
12 September 1, 2001, are subject to the provisions for duration of  
13 confinement, release to community custody, and length of community  
14 custody established in RCW ((~~9.94A.712~~)) 9.94A.507, 9.94A.704,  
15 72.09.335, and 9.95.420 through 9.95.440.

16       **Sec. 23.** RCW 9.95.055 and 2003 c 218 s 3 are each amended to read  
17 as follows:

18       The indeterminate sentence review board is hereby granted  
19 authority, in the event of a declaration by the governor that a war  
20 emergency exists, including a general mobilization, and for the  
21 duration thereof only, to reduce downward the minimum term, as set by  
22 the board, of any inmate under the jurisdiction of the board confined  
23 in a state correctional facility, who will be accepted by and inducted  
24 into the armed services: PROVIDED, That a reduction downward shall not  
25 be made under this section for those inmates who: (1) Are confined for  
26 (a) treason; (b) murder in the first degree; or (c) rape of a child in  
27 the first degree where the victim is under ten years of age or an  
28 equivalent offense under prior law; (2) are being considered for civil  
29 commitment as a sexually violent predator under chapter 71.09 RCW; or  
30 (3) were sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for a crime  
31 committed on or after September 1, 2001.

32       **Sec. 24.** RCW 9.95.070 and 2003 c 218 s 4 are each amended to read  
33 as follows:

34       (1) Every prisoner, convicted of a crime committed before July 1,  
35 1984, who has a favorable record of conduct at a state correctional  
36 institution, and who performs in a faithful, diligent, industrious,

1 orderly and peaceable manner the work, duties, and tasks assigned to  
2 him or her to the satisfaction of the superintendent of the  
3 institution, and in whose behalf the superintendent of the institution  
4 files a report certifying that his or her conduct and work have been  
5 meritorious and recommending allowance of time credits to him or her,  
6 shall upon, but not until, the adoption of such recommendation by the  
7 indeterminate sentence review board, be allowed time credit reductions  
8 from the term of imprisonment fixed by the board.

9 (2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for a  
10 crime committed on or after September 1, 2001, are subject to the  
11 earned release provisions for sex offenders established in RCW  
12 9.94A.728.

13 **Sec. 25.** RCW 9.95.090 and 2001 2nd sp.s. c 12 s 329 are each  
14 amended to read as follows:

15 (1) The board shall require of every able bodied offender confined  
16 in a state correctional institution for a crime committed before July  
17 1, 1984, as many hours of faithful labor in each and every day during  
18 his or her term of imprisonment as shall be prescribed by the rules and  
19 regulations of the institution in which he or she is confined.

20 (2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for  
21 crimes committed on or after July 1, 2001, shall perform work or other  
22 programming as required by the department of corrections during their  
23 term of confinement.

24 **Sec. 26.** RCW 9.95.110 and 2008 c 231 s 42 are each amended to read  
25 as follows:

26 (1) The board may permit an offender convicted of a crime committed  
27 before July 1, 1984, to leave the buildings and enclosures of a state  
28 correctional institution on parole, after such convicted person has  
29 served the period of confinement fixed for him or her by the board,  
30 less time credits for good behavior and diligence in work: PROVIDED,  
31 That in no case shall an inmate be credited with more than one-third of  
32 his or her sentence as fixed by the board.

33 The board may establish rules and regulations under which an  
34 offender may be allowed to leave the confines of a state correctional  
35 institution on parole, and may return such person to the confines of  
36 the institution from which he or she was paroled, at its discretion.

1 (2) The board may permit an offender convicted of a crime committed  
2 on or after September 1, 2001, and sentenced under RCW ((~~9.94A.712~~))  
3 9.94A.507, to leave a state correctional institution on community  
4 custody according to the provisions of RCW ((~~9.94A.712~~)) 9.94A.507,  
5 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. The person may be  
6 returned to the institution following a violation of his or her  
7 conditions of release to community custody pursuant to the hearing  
8 provisions of RCW 9.95.435.

9 **Sec. 27.** RCW 9.95.121 and 2001 2nd sp.s. c 12 s 334 are each  
10 amended to read as follows:

11 (1) For offenders convicted of crimes committed before July 1,  
12 1984, within fifteen days from the date of notice to the department of  
13 corrections of the arrest and detention of the alleged parole violator,  
14 he or she shall be personally served by a state community corrections  
15 officer with a copy of the factual allegations of the violation of the  
16 conditions of parole, and, at the same time shall be advised of his or  
17 her right to an on-site parole revocation hearing and of his or her  
18 rights and privileges as provided in RCW 9.95.120 through 9.95.126.  
19 The alleged parole violator, after service of the allegations of  
20 violations of the conditions of parole and the advice of rights may  
21 waive the on-site parole revocation hearing as provided in RCW  
22 9.95.120, and admit one or more of the alleged violations of the  
23 conditions of parole. If the board accepts the waiver it shall either,  
24 (a) reinstate the parolee on parole under the same or modified  
25 conditions, or (b) revoke the parole of the parolee and enter an order  
26 of parole revocation and return to state custody. A determination of  
27 a new minimum sentence shall be made within thirty days of return to  
28 state custody which shall not exceed the maximum sentence as provided  
29 by law for the crime of which the parolee was originally convicted or  
30 the maximum fixed by the court.

31 If the waiver made by the parolee is rejected by the board it shall  
32 hold an on-site parole revocation hearing under the provisions of RCW  
33 9.95.120 through 9.95.126.

34 (2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 are  
35 subject to the violation hearing process established in RCW 9.95.435.

1       **Sec. 28.** RCW 9.95.122 and 2001 2nd sp.s. c 12 s 335 are each  
2 amended to read as follows:

3       (1) At any on-site parole revocation hearing for a person convicted  
4 of a crime committed before July 1, 1984, the alleged parole violator  
5 shall be entitled to be represented by an attorney of his or her own  
6 choosing and at his or her own expense, except, upon the presentation  
7 of satisfactory evidence of indigency and the request for the  
8 appointment of an attorney by the alleged parole violator, the board  
9 may cause the appointment of an attorney to represent the alleged  
10 parole violator to be paid for at state expense, and, in addition, the  
11 board may assume all or such other expenses in the presentation of  
12 evidence on behalf of the alleged parole violator as it may have  
13 authorized: PROVIDED, That funds are available for the payment of  
14 attorneys' fees and expenses. Attorneys for the representation of  
15 alleged parole violators in on-site hearings shall be appointed by the  
16 superior courts for the counties wherein the on-site parole revocation  
17 hearing is to be held and such attorneys shall be compensated in such  
18 manner and in such amount as shall be fixed in a schedule of fees  
19 adopted by rule of the board.

20       (2) The rights of offenders sentenced under RCW ((~~9.94A.712~~))  
21 9.94A.507 are defined in RCW 9.95.435.

22       **Sec. 29.** RCW 9.95.140 and 2001 2nd sp.s. c 12 s 341 are each  
23 amended to read as follows:

24       (1) The board shall cause a complete record to be kept of every  
25 prisoner under the jurisdiction of the board released on parole or  
26 community custody. Such records shall be organized in accordance with  
27 the most modern methods of filing and indexing so that there will be  
28 always immediately available complete information about each such  
29 prisoner. Subject to information sharing provisions related to  
30 mentally ill offenders, the end of sentence review committee, and the  
31 department of corrections, the board may make rules as to the privacy  
32 of such records and their use by others than the board and its staff.  
33 Sex offenders convicted of crimes committed before July 1, 1984, who  
34 are under the board's jurisdiction shall be subject to the  
35 determinations of the end of sentence review committee regarding risk  
36 level and subject to sex offender registration and community

1 notification. The board shall be immune from liability for the release  
2 of information concerning sex offenders as provided in RCW 4.24.550.

3 The superintendents of state correctional facilities and all  
4 officers and employees thereof and all other public officials shall at  
5 all times cooperate with the board and furnish to the board, its  
6 officers, and employees such information as may be necessary to enable  
7 it to perform its functions, and such superintendents and other  
8 employees shall at all times give the members of the board, its  
9 officers, and employees free access to all prisoners confined in the  
10 state correctional facilities.

11 (2) Offenders sentenced under RCW ((9.94A.712)) 9.94A.507 shall be  
12 subject to the determinations of the end of sentence review committee  
13 regarding risk level and subject to sex offender registration and  
14 community notification.

15 (3) The end of sentence review committee shall make law enforcement  
16 notifications for offenders under board jurisdiction on the same basis  
17 that it notifies law enforcement regarding offenders sentenced under  
18 chapter 9.94A RCW for crimes committed after July 1, 1984.

19 **Sec. 30.** RCW 9.95.425 and 2001 2nd sp.s. c 12 s 307 are each  
20 amended to read as follows:

21 (1) Whenever the board or a community corrections officer of this  
22 state has reason to believe an offender released under RCW 9.95.420 has  
23 violated a condition of community custody or the laws of this state,  
24 any community corrections officer may arrest or cause the arrest and  
25 detention of the offender pending a determination by the board whether  
26 sanctions should be imposed or the offender's community custody should  
27 be revoked. The community corrections officer shall report all facts  
28 and circumstances surrounding the alleged violation to the board, with  
29 recommendations.

30 (2) If the board or the department causes the arrest or detention  
31 of an offender for a violation that does not amount to a new crime and  
32 the offender is arrested or detained by local law enforcement or in a  
33 local jail, the board or department, whichever caused the arrest or  
34 detention, shall be financially responsible for local costs. Jail bed  
35 costs shall be allocated at the rate established under RCW  
36 9.94A.740((+3+)).

1       **Sec. 31.** RCW 9.95.900 and 2001 2nd sp.s. c 12 s 353 are each  
2 amended to read as follows:

3       (1) Except as provided in subsection (2) of this section, the  
4 following sections of law do not apply to any felony offense committed  
5 on or after July 1, 1984: RCW 9.95.010, 9.95.011, 9.95.013, 9.95.015,  
6 9.95.017, 9.95.040, 9.95.045, 9.95.047, 9.95.052, 9.95.080, 9.95.100,  
7 9.95.115, 9.95.116, 9.95.120, 9.95.124, 9.95.125, 9.95.130, 9.95.190,  
8 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212, 9.95.214, 9.95.220,  
9 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.280, 9.95.290,  
10 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350, 9.95.360, 9.95.370,  
11 72.04A.070, and 72.04A.080.

12       (2) The following sections apply to any felony offense committed  
13 before July 1, 1984, and to any offense sentenced under RCW  
14 (~~(9.94A.712)~~) 9.94A.507 and committed on or after July 1, 2001: RCW  
15 9.95.003, 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032,  
16 9.95.055, 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090,  
17 9.95.110, 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150,  
18 9.95.160, 9.95.170, 9.95.300, and 9.96.050.

19       **Sec. 32.** RCW 9A.76.115 and 2001 2nd sp.s. c 12 s 360 are each  
20 amended to read as follows:

21       (1) A person is guilty of sexually violent predator escape if:

22       (a) Having been found to be a sexually violent predator and  
23 confined to the special commitment center or another secure facility  
24 under court order, the person escapes from the secure facility;

25       (b) Having been found to be a sexually violent predator and being  
26 under an order of conditional release, the person leaves or remains  
27 absent from the state of Washington without prior court authorization;  
28 or

29       (c) Having been found to be a sexually violent predator and being  
30 under an order of conditional release, the person: (i) Without  
31 authorization, leaves or remains absent from his or her residence,  
32 place of employment, educational institution, or authorized outing;  
33 (ii) tampers with his or her electronic monitoring device or removes it  
34 without authorization; or (iii) escapes from his or her escort.

35       (2) Sexually violent predator escape is a class A felony with a  
36 minimum sentence of sixty months, and shall be sentenced under RCW  
37 (~~(9.94A.712)~~) 9.94A.507.

1       **Sec. 33.** RCW 13.40.135 and 1997 c 338 s 23 are each amended to  
2 read as follows:

3       (1) The prosecuting attorney shall file a special allegation of  
4 sexual motivation in every juvenile offense other than sex offenses as  
5 defined in RCW 9.94A.030(~~((33)(a) or (e))~~) when sufficient admissible  
6 evidence exists, which, when considered with the most plausible,  
7 reasonably consistent defense that could be raised under the evidence,  
8 would justify a finding of sexual motivation by a reasonable and  
9 objective fact finder.

10       (2) In a juvenile case wherein there has been a special allegation  
11 the state shall prove beyond a reasonable doubt that the juvenile  
12 committed the offense with a sexual motivation. The court shall make  
13 a finding of fact of whether or not the sexual motivation was present  
14 at the time of the commission of the offense. This finding shall not  
15 be applied to sex offenses as defined in RCW 9.94A.030(~~((33)(a) or~~  
16 ~~(e))~~).

17       (3) The prosecuting attorney shall not withdraw the special  
18 allegation of "sexual motivation" without approval of the court through  
19 an order of dismissal. The court shall not dismiss the special  
20 allegation unless it finds that such an order is necessary to correct  
21 an error in the initial charging decision or unless there are  
22 evidentiary problems which make proving the special allegation  
23 doubtful.

24       **Sec. 34.** RCW 72.09.335 and 2001 2nd sp.s. c 12 s 305 are each  
25 amended to read as follows:

26       The department shall provide offenders sentenced under RCW  
27 (~~(9.94A.712)~~) 9.94A.507 with the opportunity for sex offender treatment  
28 during incarceration.

29       **Sec. 35.** RCW 72.09.340 and 2005 c 436 s 3 are each amended to read  
30 as follows:

31       (1) In making all discretionary decisions regarding release plans  
32 for and supervision of sex offenders, the department shall set  
33 priorities and make decisions based on an assessment of public safety  
34 risks.

35       (2) The department shall, no later than September 1, 1996,  
36 implement a policy governing the department's evaluation and approval



1 of release plans for sex offenders. The policy shall include, at a  
2 minimum, a formal process by which victims, witnesses, and other  
3 interested people may provide information and comments to the  
4 department on potential safety risks to specific individuals or classes  
5 of individuals posed by a specific sex offender. The department shall  
6 make all reasonable efforts to publicize the availability of this  
7 process through currently existing mechanisms and shall seek the  
8 assistance of courts, prosecutors, law enforcement, and victims'  
9 advocacy groups in doing so. Notice of an offender's proposed  
10 residence shall be provided to all people registered to receive notice  
11 of an offender's release under RCW ((9.94A.612)) 72.09.712(2), except  
12 that in no case may this notification requirement be construed to  
13 require an extension of an offender's release date.

14 (3)(a) For any offender convicted of a felony sex offense against  
15 a minor victim after June 6, 1996, the department shall not approve a  
16 residence location if the proposed residence: (i) Includes a minor  
17 victim or child of similar age or circumstance as a previous victim who  
18 the department determines may be put at substantial risk of harm by the  
19 offender's residence in the household; or (ii) is within close  
20 proximity of the current residence of a minor victim, unless the  
21 whereabouts of the minor victim cannot be determined or unless such a  
22 restriction would impede family reunification efforts ordered by the  
23 court or directed by the department of social and health services. The  
24 department is further authorized to reject a residence location if the  
25 proposed residence is within close proximity to schools, child care  
26 centers, playgrounds, or other grounds or facilities where children of  
27 similar age or circumstance as a previous victim are present who the  
28 department determines may be put at substantial risk of harm by the sex  
29 offender's residence at that location.

30 (b) In addition, for any offender prohibited from living in a  
31 community protection zone under RCW ((9.94A.712(6)(a)(ii)))  
32 9.94A.703(1)(c), the department may not approve a residence location if  
33 the proposed residence is in a community protection zone.

34 (4) When the department requires supervised visitation as a term or  
35 condition of a sex offender's community placement under RCW  
36 ((9.94A.700)) 9.94B.050(6), the department shall, prior to approving a  
37 supervisor, consider the following:

1 (a) The relationships between the proposed supervisor, the  
2 offender, and the minor; (b) the proposed supervisor's acknowledgment  
3 and understanding of the offender's prior criminal conduct, general  
4 knowledge of the dynamics of child sexual abuse, and willingness and  
5 ability to protect the minor from the potential risks posed by contact  
6 with the offender; and (c) recommendations made by the department of  
7 social and health services about the best interests of the child.

8 **Sec. 36.** RCW 72.09.370 and 2001 2nd sp.s. c 12 s 362 are each  
9 amended to read as follows:

10 (1) The secretary shall identify offenders in confinement or  
11 partial confinement who: (a) Are reasonably believed to be dangerous  
12 to themselves or others; and (b) have a mental disorder. In  
13 determining an offender's dangerousness, the secretary shall consider  
14 behavior known to the department and factors, based on research, that  
15 are linked to an increased risk for dangerousness of mentally ill  
16 offenders and shall include consideration of an offender's chemical  
17 dependency or abuse.

18 (2) Prior to release of an offender identified under this section,  
19 a team consisting of representatives of the department of corrections,  
20 the division of mental health, and, as necessary, the indeterminate  
21 sentence review board, other divisions or administrations within the  
22 department of social and health services, specifically including the  
23 division of alcohol and substance abuse and the division of  
24 developmental disabilities, the appropriate regional support network,  
25 and the providers, as appropriate, shall develop a plan, as determined  
26 necessary by the team, for delivery of treatment and support services  
27 to the offender upon release. The team may include a school district  
28 representative for offenders under the age of twenty-one. The team  
29 shall consult with the offender's counsel, if any, and, as appropriate,  
30 the offender's family and community. The team shall notify the crime  
31 victim/witness program, which shall provide notice to all people  
32 registered to receive notice under RCW ((9-94A.612)) 72.09.712 of the  
33 proposed release plan developed by the team. Victims, witnesses, and  
34 other interested people notified by the department may provide  
35 information and comments to the department on potential safety risk to  
36 specific individuals or classes of individuals posed by the specific  
37 offender. The team may recommend: (a) That the offender be evaluated

1 by the ((county)) designated mental health professional, as defined in  
2 chapter 71.05 RCW; (b) department-supervised community treatment; or  
3 (c) voluntary community mental health or chemical dependency or abuse  
4 treatment.

5 (3) Prior to release of an offender identified under this section,  
6 the team shall determine whether or not an evaluation by a county  
7 designated mental health professional is needed. If an evaluation is  
8 recommended, the supporting documentation shall be immediately  
9 forwarded to the appropriate county designated mental health  
10 professional. The supporting documentation shall include the  
11 offender's criminal history, history of judicially required or  
12 administratively ordered involuntary antipsychotic medication while in  
13 confinement, and any known history of involuntary civil commitment.

14 (4) If an evaluation by a county designated mental health  
15 professional is recommended by the team, such evaluation shall occur  
16 not more than ten days, nor less than five days, prior to release.

17 (5) A second evaluation by a county designated mental health  
18 professional shall occur on the day of release if requested by the  
19 team, based upon new information or a change in the offender's mental  
20 condition, and the initial evaluation did not result in an emergency  
21 detention or a summons under chapter 71.05 RCW.

22 (6) If the county designated mental health professional determines  
23 an emergency detention under chapter 71.05 RCW is necessary, the  
24 department shall release the offender only to a state hospital or to a  
25 consenting evaluation and treatment facility. The department shall  
26 arrange transportation of the offender to the hospital or facility.

27 (7) If the county designated mental health professional believes  
28 that a less restrictive alternative treatment is appropriate, he or she  
29 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,  
30 to require the offender to appear at an evaluation and treatment  
31 facility. If a summons is issued, the offender shall remain within the  
32 corrections facility until completion of his or her term of confinement  
33 and be transported, by corrections personnel on the day of completion,  
34 directly to the identified evaluation and treatment facility.

35 (8) The secretary shall adopt rules to implement this section.

36 **Sec. 37.** RCW 72.09.714 and 1989 c 30 s 2 are each amended to read  
37 as follows:

1 The department of corrections shall provide the victims and next of  
2 kin in the case of a homicide and witnesses involved in violent offense  
3 cases or sex offenses as defined by RCW 9.94A.030 where a judgment and  
4 sentence was entered after October 1, 1983, a statement of the rights  
5 of victims and witnesses to request and receive notification under RCW  
6 ((9.94A.612)) 72.09.712 and ((9.94A.616)) 72.09.716.

7 **Sec. 38.** RCW 72.09.716 and 1985 c 346 s 3 are each amended to read  
8 as follows:

9 Requests for notification under RCW ((9.94A.612)) 72.09.712 shall  
10 be made by sending a written request by certified mail directly to the  
11 department of corrections and giving the defendant's name, the name of  
12 the county in which the trial took place, and the month of the trial.  
13 Notification information and necessary forms shall be available through  
14 the department of corrections, county prosecutors' offices, and other  
15 agencies as deemed appropriate by the department of corrections.

16 **Sec. 39.** RCW 72.09.718 and 1985 c 346 s 4 are each amended to read  
17 as follows:

18 The notification requirements of RCW ((9.94A.612)) 72.09.712 are in  
19 addition to any requirements in RCW 43.43.745 or other law.

20 **Sec. 40.** RCW 72.09.720 and 1985 c 346 s 7 are each amended to read  
21 as follows:

22 Civil liability shall not result from failure to provide notice  
23 required under RCW ((9.94A.612)) 72.09.712 through ((9.94A.618))  
24 72.09.718, 9.94A.030, and 43.43.745 unless the failure is the result of  
25 gross negligence.

26 NEW SECTION. **Sec. 41.** (1) RCW 9.94A.602 and 9.94A.605 are each  
27 recodified as sections in chapter 9.94A RCW under the subchapter  
28 heading "special allegations."

29 (2) RCW 9.94A.771 is recodified as a section in chapter 9.94B RCW.

30 NEW SECTION. **Sec. 42.** The following acts or parts of acts are  
31 each repealed:

32 (1) RCW 9.94A.545 (Community custody) and 2008 c 276 s 304, 2006 c

1 128 s 4, 2003 c 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s  
2 23, & 1984 c 209 s 22; and

3 (2) RCW 9.94A.715 (Community custody for specified offenders--  
4 Conditions) and 2008 c 276 s 305; 2006 c 130 s 2, 2006 c 128 s 5, 2003  
5 c 379 s 6, 2001 2nd sp.s. c 12 s 302, 2001 c 10 s 5, & 2000 c 28 s 25.

6 NEW SECTION. **Sec. 43.** This act takes effect August 1, 2009.

Passed by the Senate February 26, 2009.

Passed by the House March 30, 2009.

Approved by the Governor April 8, 2009.

Filed in Office of Secretary of State April 9, 2009.

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE SENATE BILL 5288

61st Legislature  
2009 Regular Session

Passed by the Senate April 25, 2009  
YEAS 26 NAYS 23

\_\_\_\_\_  
President of the Senate

Passed by the House April 21, 2009  
YEAS 51 NAYS 45

\_\_\_\_\_  
Speaker of the House of Representatives

Approved

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 5288 as passed by the Senate and the House of Representatives on the dates hereon set forth.

\_\_\_\_\_  
Secretary

FILED

Secretary of State  
State of Washington

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ENGROSSED SUBSTITUTE SENATE BILL 5288

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AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by  
Senators Hargrove, Stevens, Regala, and Shin)

READ FIRST TIME 01/26/09.

1 AN ACT Relating to the supervision of offenders; amending RCW  
2 9.94A.501, 9.94A.501, 9.94A.030, 9.94A.701, 9.94A.704, 9.94A.707,  
3 9.94A.850, 9.95.220, 9.94A.633, 9.94A.737, and 9.94A.6332; amending  
4 2008 c 231 s 6 (uncodified); reenacting and amending RCW 9.94A.030;  
5 creating new sections; repealing RCW 9.95.206 and 9.95.212; repealing  
6 2008 c 231 s 60 (uncodified); providing an effective date; providing an  
7 expiration date; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read  
10 as follows:

11 ~~(1) ((When the department performs a risk assessment pursuant to~~  
12 ~~RCW 9.94A.500, or to determine a person's conditions of supervision,~~  
13 ~~the risk assessment shall classify the offender or a probationer~~  
14 ~~sentenced in superior court into one of at least four risk categories.~~

15 ~~(2) The department shall supervise every offender sentenced to a~~  
16 ~~term of community custody, community placement, or community~~  
17 ~~supervision and every misdemeanor and gross misdemeanor probationer~~  
18 ~~ordered by a superior court to probation under the supervision of the~~  
19 ~~department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210.~~

1 ~~(a) Whose risk assessment places that offender or probationer in~~  
2 ~~one of the two highest risk categories; or~~

3 ~~(b) Regardless of the offender's or probationer's risk category if:~~

4 ~~(i) The offender's or probationer's current conviction is for:~~

5 ~~(A) A sex offense;~~

6 ~~(B) A violent offense;~~

7 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

8 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

9 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

10 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
11 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
12 ~~intent to deliver methamphetamine; or~~

13 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
14 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

15 ~~(ii) The offender or probationer has a prior conviction for:~~

16 ~~(A) A sex offense;~~

17 ~~(B) A violent offense;~~

18 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

19 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

20 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

21 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
22 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
23 ~~intent to deliver methamphetamine; or~~

24 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
25 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

26 ~~(iii) The conditions of the offender's community custody, community~~  
27 ~~placement, or community supervision or the probationer's supervision~~  
28 ~~include chemical dependency treatment;~~

29 ~~(iv) The offender))~~ The department shall supervise every offender  
30 convicted of a misdemeanor or gross misdemeanor offense who is  
31 sentenced to probation in superior court, pursuant to RCW 9.92.060,  
32 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this  
33 subsection. The superior court shall order probation for:

34 (a) Offenders convicted of fourth degree assault, violation of a  
35 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
36 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
37 and who also have a prior conviction for one or more of the following:

38 (i) A violent offense;



1        (ii) A sex offense;  
2        (iii) A crime against a person as provided in RCW 9.94A.411;  
3        (iv) Fourth degree assault; or  
4        (v) Violation of a domestic violence court order; and  
5        (b) Offenders convicted of:  
6        (i) Sexual misconduct with a minor second degree;  
7        (ii) Custodial sexual misconduct second degree;  
8        (iii) Communication with a minor for immoral purposes; and  
9        (iv) Failure to register pursuant to RCW 9A.44.130.  
10       (2) Misdemeanor and gross misdemeanor offenders supervised by the  
11 department pursuant to this section shall be placed on community  
12 custody.  
13       (3) The department shall supervise every felony offender sentenced  
14 to community custody whose risk assessment, conducted pursuant to  
15 subsection (6) of this section, places the offender in one of the two  
16 highest risk categories.  
17       (4) Notwithstanding any other provision of this section, the  
18 department shall supervise an offender sentenced to community custody  
19 regardless of risk classification if the offender:  
20       (a) Has a current conviction for a sex offense;  
21       (b) Has been identified by the department as a dangerous mentally  
22 ill offender pursuant to RCW 72.09.370;  
23       (c) Has an indeterminate sentence and is subject to parole pursuant  
24 to RCW 9.95.017;  
25       (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or  
26       ~~((v) The offender))~~ (e) Is subject to supervision pursuant to RCW  
27 9.94A.745.  
28       ~~((+3+))~~ (5) The department is not authorized to, and may not,  
29 supervise any offender sentenced to a term of community custody,  
30 community placement, or community supervision or any probationer unless  
31 the offender or probationer is one for whom supervision is required  
32 under subsection (1), (2), (3), or (4) of this section.  
33       ~~((+4) This section expires July 1, 2010))~~ (6) The department shall  
34 conduct a risk assessment for every felony offender sentenced to a term  
35 of community custody, community placement, or community supervision who  
36 may be subject to supervision under this section.

1        **Sec. 2.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read  
2 as follows:

3        ~~(1) ((When the department performs a risk assessment pursuant to~~  
4 ~~RCW 9.94A.500, or to determine a person's conditions of supervision,~~  
5 ~~the risk assessment shall classify the offender or a probationer~~  
6 ~~sentenced in superior court into one of at least four risk categories.~~

7        ~~(2) The department shall supervise every offender sentenced to a~~  
8 ~~term of community custody and every misdemeanor and gross misdemeanor~~  
9 ~~probationer ordered by a superior court to probation under the~~  
10 ~~supervision of the department pursuant to RCW 9.92.060, 9.95.204, or~~  
11 ~~9.95.210.~~

12        ~~(a) Whose risk assessment places that offender or probationer in~~  
13 ~~one of the two highest risk categories; or~~

14        ~~(b) Regardless of the offender's or probationer's risk category if:~~

15        ~~(i) The offender's or probationer's current conviction is for:~~

16        ~~(A) A sex offense;~~

17        ~~(B) A violent offense;~~

18        ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

19        ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

20        ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

21        ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
22 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
23 ~~intent to deliver methamphetamine; or~~

24        ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
25 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

26        ~~(ii) The offender or probationer has a prior conviction for:~~

27        ~~(A) A sex offense;~~

28        ~~(B) A violent offense;~~

29        ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

30        ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

31        ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

32        ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
33 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
34 ~~intent to deliver methamphetamine; or~~

35        ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
36 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

37        ~~(iii) The conditions of the offender's community custody or the~~  
38 ~~probationer's supervision include chemical dependency treatment;~~

1       ~~(iv) The offender)~~ The department shall supervise every offender  
2 convicted of a misdemeanor or gross misdemeanor offense who is  
3 sentenced to probation in superior court, pursuant to RCW 9.92.060,  
4 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this  
5 subsection. The superior court shall order probation for:

6       (a) Offenders convicted of fourth degree assault, violation of a  
7 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
8 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
9 and who also have a prior conviction for one or more of the following:

10       (i) A violent offense;

11       (ii) A sex offense;

12       (iii) A crime against a person as provided in RCW 9.94A.411;

13       (iv) Fourth degree assault; or

14       (v) Violation of a domestic violence court order; and

15       (b) Offenders convicted of:

16       (i) Sexual misconduct with a minor second degree;

17       (ii) Custodial sexual misconduct second degree;

18       (iii) Communication with a minor for immoral purposes; and

19       (iv) Failure to register pursuant to RCW 9A.44.130.

20       (2) Misdemeanor and gross misdemeanor offenders supervised by the  
21 department pursuant to this section shall be placed on community  
22 custody.

23       (3) The department shall supervise every felony offender sentenced  
24 to community custody whose risk assessment, conducted pursuant to  
25 subsection (6) of this section, classifies the offender as one who is  
26 at a high risk to reoffend.

27       (4) Notwithstanding any other provision of this section, the  
28 department shall supervise an offender sentenced to community custody  
29 regardless of risk classification if the offender:

30       (a) Has a current conviction for a sex offense;

31       (b) Has been identified by the department as a dangerous mentally  
32 ill offender pursuant to RCW 72.09.370;

33       (c) Has an indeterminate sentence and is subject to parole pursuant  
34 to RCW 9.95.017;

35       (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

36       ~~((v) The offender)~~ (e) Is subject to supervision pursuant to RCW  
37 9.94A.745.

1       ~~((+3+))~~ (5) The department is not authorized to, and may not,  
2 supervise any offender sentenced to a term of community custody or any  
3 probationer unless the offender or probationer is one for whom  
4 supervision is required under subsection (1), (2), (3), or (4) of this  
5 section.

6       ~~((+4) This section expires July 1, 2010))~~ (6) The department shall  
7 conduct a risk assessment for every felony offender sentenced to a term  
8 of community custody who may be subject to supervision under this  
9 section.

10       **Sec. 3.** RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are  
11 each reenacted and amended to read as follows:

12       Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

14       (1) "Board" means the indeterminate sentence review board created  
15 under chapter 9.95 RCW.

16       (2) "Collect," or any derivative thereof, "collect and remit," or  
17 "collect and deliver," when used with reference to the department,  
18 means that the department, either directly or through a collection  
19 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
20 and enforcing the offender's sentence with regard to the legal  
21 financial obligation, receiving payment thereof from the offender, and,  
22 consistent with current law, delivering daily the entire payment to the  
23 superior court clerk without depositing it in a departmental account.

24       (3) "Commission" means the sentencing guidelines commission.

25       (4) "Community corrections officer" means an employee of the  
26 department who is responsible for carrying out specific duties in  
27 supervision of sentenced offenders and monitoring of sentence  
28 conditions.

29       (5) "Community custody" means that portion of an offender's  
30 sentence of confinement in lieu of earned release time or imposed  
31 ~~((pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~  
32 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,))~~ as part of a  
33 sentence under this chapter and served in the community subject to  
34 controls placed on the offender's movement and activities by the  
35 department. For offenders placed on community custody for crimes  
36 committed on or after July 1, 2000, the department shall assess the

1 offender's risk of reoffense and may establish and modify conditions of  
2 community custody, in addition to those imposed by the court, based  
3 upon the risk to community safety.

4 (6) "Community custody range" means the minimum and maximum period  
5 of community custody included as part of a sentence under RCW  
6 9.94A.715, as established by the commission or the legislature under  
7 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

8 (7) "Community placement" means that period during which the  
9 offender is subject to the conditions of community custody and/or  
10 postrelease supervision, which begins either upon completion of the  
11 term of confinement (postrelease supervision) or at such time as the  
12 offender is transferred to community custody in lieu of earned release.  
13 Community placement may consist of entirely community custody, entirely  
14 postrelease supervision, or a combination of the two.

15 (8) "Community protection zone" means the area within eight hundred  
16 eighty feet of the facilities and grounds of a public or private  
17 school.

18 (9) "Community restitution" means compulsory service, without  
19 compensation, performed for the benefit of the community by the  
20 offender.

21 (10) "Community supervision" means a period of time during which a  
22 convicted offender is subject to crime-related prohibitions and other  
23 sentence conditions imposed by a court pursuant to this chapter or RCW  
24 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
25 a chemical dependency that has contributed to his or her offense, the  
26 conditions of supervision may, subject to available resources, include  
27 treatment. For purposes of the interstate compact for out-of-state  
28 supervision of parolees and probationers, RCW 9.95.270, community  
29 supervision is the functional equivalent of probation and should be  
30 considered the same as probation by other states.

31 (11) "Confinement" means total or partial confinement.

32 (12) "Conviction" means an adjudication of guilt pursuant to  
33 Title((s)) 10 or 13 RCW and includes a verdict of guilty, a finding of  
34 guilty, and acceptance of a plea of guilty.

35 (13) "Crime-related prohibition" means an order of a court  
36 prohibiting conduct that directly relates to the circumstances of the  
37 crime for which the offender has been convicted, and shall not be  
38 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform  
2 affirmative conduct. However, affirmative acts necessary to monitor  
3 compliance with the order of a court may be required by the department.

4 (14) "Criminal history" means the list of a defendant's prior  
5 convictions and juvenile adjudications, whether in this state, in  
6 federal court, or elsewhere.

7 (a) The history shall include, where known, for each conviction (i)  
8 whether the defendant has been placed on probation and the length and  
9 terms thereof; and (ii) whether the defendant has been incarcerated and  
10 the length of incarceration.

11 (b) A conviction may be removed from a defendant's criminal history  
12 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
13 a similar out-of-state statute, or if the conviction has been vacated  
14 pursuant to a governor's pardon.

15 (c) The determination of a defendant's criminal history is distinct  
16 from the determination of an offender score. A prior conviction that  
17 was not included in an offender score calculated pursuant to a former  
18 version of the sentencing reform act remains part of the defendant's  
19 criminal history.

20 (15) "Criminal street gang" means any ongoing organization,  
21 association, or group of three or more persons, whether formal or  
22 informal, having a common name or common identifying sign or symbol,  
23 having as one of its primary activities the commission of criminal  
24 acts, and whose members or associates individually or collectively  
25 engage in or have engaged in a pattern of criminal street gang  
26 activity. This definition does not apply to employees engaged in  
27 concerted activities for their mutual aid and protection, or to the  
28 activities of labor and bona fide nonprofit organizations or their  
29 members or agents.

30 (16) "Criminal street gang associate or member" means any person  
31 who actively participates in any criminal street gang and who  
32 intentionally promotes, furthers, or assists in any criminal act by the  
33 criminal street gang.

34 (17) "Criminal street gang-related offense" means any felony or  
35 misdemeanor offense, whether in this state or elsewhere, that is  
36 committed for the benefit of, at the direction of, or in association  
37 with any criminal street gang, or is committed with the intent to

1 promote, further, or assist in any criminal conduct by the gang, or is  
2 committed for one or more of the following reasons:

3 (a) To gain admission, prestige, or promotion within the gang;

4 (b) To increase or maintain the gang's size, membership, prestige,  
5 dominance, or control in any geographical area;

6 (c) To exact revenge or retribution for the gang or any member of  
7 the gang;

8 (d) To obstruct justice, or intimidate or eliminate any witness  
9 against the gang or any member of the gang;

10 (e) To directly or indirectly cause any benefit, aggrandizement,  
11 gain, profit, or other advantage for the gang, its reputation,  
12 influence, or membership; or

13 (f) To provide the gang with any advantage in, or any control or  
14 dominance over any criminal market sector, including, but not limited  
15 to, manufacturing, delivering, or selling any controlled substance  
16 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
17 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
18 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
19 (chapter 9.68 RCW).

20 (18) "Day fine" means a fine imposed by the sentencing court that  
21 equals the difference between the offender's net daily income and the  
22 reasonable obligations that the offender has for the support of the  
23 offender and any dependents.

24 (19) "Day reporting" means a program of enhanced supervision  
25 designed to monitor the offender's daily activities and compliance with  
26 sentence conditions, and in which the offender is required to report  
27 daily to a specific location designated by the department or the  
28 sentencing court.

29 (20) "Department" means the department of corrections.

30 (21) "Determinate sentence" means a sentence that states with  
31 exactitude the number of actual years, months, or days of total  
32 confinement, of partial confinement, of community supervision, the  
33 number of actual hours or days of community restitution work, or  
34 dollars or terms of a legal financial obligation. The fact that an  
35 offender through earned release can reduce the actual period of  
36 confinement shall not affect the classification of the sentence as a  
37 determinate sentence.

1 (22) "Disposable earnings" means that part of the earnings of an  
2 offender remaining after the deduction from those earnings of any  
3 amount required by law to be withheld. For the purposes of this  
4 definition, "earnings" means compensation paid or payable for personal  
5 services, whether denominated as wages, salary, commission, bonuses, or  
6 otherwise, and, notwithstanding any other provision of law making the  
7 payments exempt from garnishment, attachment, or other process to  
8 satisfy a court-ordered legal financial obligation, specifically  
9 includes periodic payments pursuant to pension or retirement programs,  
10 or insurance policies of any type, but does not include payments made  
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
12 or Title 74 RCW.

13 (23) "Drug offender sentencing alternative" is a sentencing option  
14 available to persons convicted of a felony offense other than a violent  
15 offense or a sex offense and who are eligible for the option under RCW  
16 9.94A.660.

17 (24) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of  
19 a controlled substance (RCW 69.50.4013) or forged prescription for a  
20 controlled substance (RCW 69.50.403);

21 (b) Any offense defined as a felony under federal law that relates  
22 to the possession, manufacture, distribution, or transportation of a  
23 controlled substance; or

24 (c) Any out-of-state conviction for an offense that under the laws  
25 of this state would be a felony classified as a drug offense under (a)  
26 of this subsection.

27 (25) "Earned release" means earned release from confinement as  
28 provided in RCW 9.94A.728.

29 (26) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
31 first degree (RCW 9A.76.110), escape in the second degree (RCW  
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
33 willful failure to return from work release (RCW 72.65.070), or willful  
34 failure to be available for supervision by the department while in  
35 community custody (RCW 72.09.310); or

36 (b) Any federal or out-of-state conviction for an offense that  
37 under the laws of this state would be a felony classified as an escape  
38 under (a) of this subsection.



1 (27) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
3 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
4 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
6 felony physical control of a vehicle while under the influence of  
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

8 (b) Any federal or out-of-state conviction for an offense that  
9 under the laws of this state would be a felony classified as a felony  
10 traffic offense under (a) of this subsection.

11 (28) "Fine" means a specific sum of money ordered by the sentencing  
12 court to be paid by the offender to the court over a specific period of  
13 time.

14 (29) "First-time offender" means any person who has no prior  
15 convictions for a felony and is eligible for the first-time offender  
16 waiver under RCW 9.94A.650.

17 (30) "Home detention" means a program of partial confinement  
18 available to offenders wherein the offender is confined in a private  
19 residence subject to electronic surveillance.

20 (31) "Legal financial obligation" means a sum of money that is  
21 ordered by a superior court of the state of Washington for legal  
22 financial obligations which may include restitution to the victim,  
23 statutorily imposed crime victims' compensation fees as assessed  
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
25 court-appointed attorneys' fees, and costs of defense, fines, and any  
26 other financial obligation that is assessed to the offender as a result  
27 of a felony conviction. Upon conviction for vehicular assault while  
28 under the influence of intoxicating liquor or any drug, RCW  
29 46.61.522(1)(b), or vehicular homicide while under the influence of  
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
31 obligations may also include payment to a public agency of the expense  
32 of an emergency response to the incident resulting in the conviction,  
33 subject to RCW 38.52.430.

34 (32) "Most serious offense" means any of the following felonies or  
35 a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or  
37 criminal solicitation of or criminal conspiracy to commit a class A  
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
- 17 a vehicle by a person while under the influence of intoxicating liquor
- 18 or any drug or by the operation or driving of a vehicle in a reckless
- 19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
- 21 any vehicle by any person while under the influence of intoxicating
- 22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
- 25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
- 27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,
- 29 1993, that is comparable to a most serious offense under this
- 30 subsection, or any federal or out-of-state conviction for an offense
- 31 that under the laws of this state would be a felony classified as a
- 32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
- 34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
- 35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
- 36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
- 37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW  
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
3 if: (A) The crime was committed against a child under the age of  
4 fourteen; or (B) the relationship between the victim and perpetrator is  
5 included in the definition of indecent liberties under RCW  
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
7 or RCW 9A.44.100(1)(d) or (e) as it existed from July 25, 1993,  
8 through July 27, 1997;

9 (w) Any out-of-state conviction for a felony offense with a finding  
10 of sexual motivation if the minimum sentence imposed was ten years or  
11 more; provided that the out-of-state felony offense must be comparable  
12 to a felony offense under Title 9 or 9A RCW and the out-of-state  
13 definition of sexual motivation must be comparable to the definition of  
14 sexual motivation contained in this section.

15 (33) "Nonviolent offense" means an offense which is not a violent  
16 offense.

17 (34) "Offender" means a person who has committed a felony  
18 established by state law and is eighteen years of age or older or is  
19 less than eighteen years of age but whose case is under superior court  
20 jurisdiction under RCW 13.04.030 or has been transferred by the  
21 appropriate juvenile court to a criminal court pursuant to RCW  
22 13.40.110. Throughout this chapter, the terms "offender" and  
23 "defendant" are used interchangeably.

24 (35) "Partial confinement" means confinement for no more than one  
25 year in a facility or institution operated or utilized under contract  
26 by the state or any other unit of government, or, if home detention or  
27 work crew has been ordered by the court, in an approved residence, for  
28 a substantial portion of each day with the balance of the day spent in  
29 the community. Partial confinement includes work release, home  
30 detention, work crew, and a combination of work crew and home  
31 detention.

32 (36) "Pattern of criminal street gang activity" means:

33 (a) The commission, attempt, conspiracy, or solicitation of, or any  
34 prior juvenile adjudication of or adult conviction of, two or more of  
35 the following criminal street gang-related offenses:

36 (i) Any "serious violent" felony offense as defined in ((RCW  
37 ~~9.94A.030~~)) this section, excluding Homicide by Abuse (RCW 9A.32.055)  
38 and Assault of a Child 1 (RCW 9A.36.120);

1 (ii) Any "violent" offense as defined by ((RCW 9.94A.030)) this  
2 section, excluding Assault of a Child 2 (RCW 9A.36.130);

3 (iii) Deliver or Possession with Intent to Deliver a Controlled  
4 Substance (chapter 69.50 RCW);

5 (iv) Any violation of the firearms and dangerous weapon act  
6 (chapter 9.41 RCW);

7 (v) Theft of a Firearm (RCW 9A.56.300);

8 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

9 (vii) Malicious Harassment (RCW 9A.36.080);

10 (viii) Harassment where a subsequent violation or deadly threat is  
11 made (RCW 9A.46.020(2)(b));

12 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

13 (x) Any felony conviction by a person eighteen years of age or  
14 older with a special finding of involving a juvenile in a felony  
15 offense under RCW 9.94A.833;

16 (xi) Residential Burglary (RCW 9A.52.025);

17 (xii) Burglary 2 (RCW 9A.52.030);

18 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

19 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

20 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

21 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

22 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

23 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
24 9A.56.075);

25 (xix) Extortion 1 (RCW 9A.56.120);

26 (xx) Extortion 2 (RCW 9A.56.130);

27 (xxi) Intimidating a Witness (RCW 9A.72.110);

28 (xxii) Tampering with a Witness (RCW 9A.72.120);

29 (xxiii) Reckless Endangerment (RCW 9A.36.050);

30 (xxiv) Coercion (RCW 9A.36.070);

31 (xxv) Harassment (RCW 9A.46.020); or

32 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

33 (b) That at least one of the offenses listed in (a) of this  
34 subsection shall have occurred after July 1, 2008;

35 (c) That the most recent committed offense listed in (a) of this  
36 subsection occurred within three years of a prior offense listed in (a)  
37 of this subsection; and

1 (d) Of the offenses that were committed in (a) of this subsection,  
2 the offenses occurred on separate occasions or were committed by two or  
3 more persons.

4 (37) "Persistent offender" is an offender who:

5 (a)(i) Has been convicted in this state of any felony considered a  
6 most serious offense; and

7 (ii) Has, before the commission of the offense under (a) of this  
8 subsection, been convicted as an offender on at least two separate  
9 occasions, whether in this state or elsewhere, of felonies that under  
10 the laws of this state would be considered most serious offenses and  
11 would be included in the offender score under RCW 9.94A.525; provided  
12 that of the two or more previous convictions, at least one conviction  
13 must have occurred before the commission of any of the other most  
14 serious offenses for which the offender was previously convicted; or

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
16 of a child in the first degree, child molestation in the first degree,  
17 rape in the second degree, rape of a child in the second degree, or  
18 indecent liberties by forcible compulsion; (B) any of the following  
19 offenses with a finding of sexual motivation: Murder in the first  
20 degree, murder in the second degree, homicide by abuse, kidnapping in  
21 the first degree, kidnapping in the second degree, assault in the first  
22 degree, assault in the second degree, assault of a child in the first  
23 degree, assault of a child in the second degree, or burglary in the  
24 first degree; or (C) an attempt to commit any crime listed in this  
25 subsection (37)(b)(i); and

26 (ii) Has, before the commission of the offense under (b)(i) of this  
27 subsection, been convicted as an offender on at least one occasion,  
28 whether in this state or elsewhere, of an offense listed in (b)(i) of  
29 this subsection or any federal or out-of-state offense or offense under  
30 prior Washington law that is comparable to the offenses listed in  
31 (b)(i) of this subsection. A conviction for rape of a child in the  
32 first degree constitutes a conviction under (b)(i) of this subsection  
33 only when the offender was sixteen years of age or older when the  
34 offender committed the offense. A conviction for rape of a child in  
35 the second degree constitutes a conviction under (b)(i) of this  
36 subsection only when the offender was eighteen years of age or older  
37 when the offender committed the offense.

1 (38) "Postrelease supervision" is that portion of an offender's  
2 community placement that is not community custody.

3 (39) "Predatory" means: (a) The perpetrator of the crime was a  
4 stranger to the victim, as defined in this section; (b) the perpetrator  
5 established or promoted a relationship with the victim prior to the  
6 offense and the victimization of the victim was a significant reason  
7 the perpetrator established or promoted the relationship; or (c) the  
8 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
9 in authority in any public or private school and the victim was a  
10 student of the school under his or her authority or supervision. For  
11 purposes of this subsection, "school" does not include home-based  
12 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
13 volunteer, or other person in authority in any recreational activity  
14 and the victim was a participant in the activity under his or her  
15 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
16 person in authority in any church or religious organization, and the  
17 victim was a member or participant of the organization under his or her  
18 authority.

19 (40) "Private school" means a school regulated under chapter  
20 28A.195 or 28A.205 RCW.

21 (41) "Public school" has the same meaning as in RCW 28A.150.010.

22 (42) "Restitution" means a specific sum of money ordered by the  
23 sentencing court to be paid by the offender to the court over a  
24 specified period of time as payment of damages. The sum may include  
25 both public and private costs.

26 (43) "Risk assessment" means the application of ~~((an objective))~~  
27 the risk instrument ~~((supported by research and adopted by))~~  
28 recommended to the department ~~((for the purpose of assessing an~~  
29 ~~offender's risk of reoffense, taking into consideration the nature of~~  
30 ~~the harm done by the offender, place and circumstances of the offender~~  
31 ~~related to risk, the offender's relationship to any victim, and any~~  
32 ~~information provided to the department by victims. The results of a~~  
33 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~  
34 ~~allegations))~~ by the Washington state institute for public policy as  
35 having the highest degree of predictive accuracy for assessing an  
36 offender's risk of reoffense.

37 (44) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating  
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
3 while under the influence of intoxicating liquor or any drug (RCW  
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
5 attended vehicle (RCW 46.52.020(5)); or

6 (b) Any federal, out-of-state, county, or municipal conviction for  
7 an offense that under the laws of this state would be classified as a  
8 serious traffic offense under (a) of this subsection.

9 (45) "Serious violent offense" is a subcategory of violent offense  
10 and means:

11 (a) (i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; or

19 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
20 commit one of these felonies; or

21 (b) Any federal or out-of-state conviction for an offense that  
22 under the laws of this state would be a felony classified as a serious  
23 violent offense under (a) of this subsection.

24 (46) "Sex offense" means:

25 (a) (i) A felony that is a violation of chapter 9A.44 RCW other than  
26 RCW 9A.44.130(12);

27 (ii) A violation of RCW 9A.64.020;

28 (iii) A felony that is a violation of chapter 9.68A RCW other than  
29 RCW 9.68A.080; or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
31 criminal solicitation, or criminal conspiracy to commit such crimes;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a sex  
34 offense in (a) of this subsection;

35 (c) A felony with a finding of sexual motivation under RCW  
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex  
2 offense under (a) of this subsection.

3 (47) "Sexual motivation" means that one of the purposes for which  
4 the defendant committed the crime was for the purpose of his or her  
5 sexual gratification.

6 (48) "Standard sentence range" means the sentencing court's  
7 discretionary range in imposing a nonappealable sentence.

8 (49) "Statutory maximum sentence" means the maximum length of time  
9 for which an offender may be confined as punishment for a crime as  
10 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
11 crime, or other statute defining the maximum penalty for a crime.

12 (50) "Stranger" means that the victim did not know the offender  
13 twenty-four hours before the offense.

14 (51) "Total confinement" means confinement inside the physical  
15 boundaries of a facility or institution operated or utilized under  
16 contract by the state or any other unit of government for twenty-four  
17 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 (52) "Transition training" means written and verbal instructions  
19 and assistance provided by the department to the offender during the  
20 two weeks prior to the offender's successful completion of the work  
21 ethic camp program. The transition training shall include instructions  
22 in the offender's requirements and obligations during the offender's  
23 period of community custody.

24 (53) "Victim" means any person who has sustained emotional,  
25 psychological, physical, or financial injury to person or property as  
26 a direct result of the crime charged.

27 (54) "Violent offense" means:

28 (a) Any of the following felonies:

29 (i) Any felony defined under any law as a class A felony or an  
30 attempt to commit a class A felony;

31 (ii) Criminal solicitation of or criminal conspiracy to commit a  
32 class A felony;

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

35 (v) Indecent liberties if committed by forcible compulsion;

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;



1 (ix) Assault of a child in the second degree;  
2 (x) Extortion in the first degree;  
3 (xi) Robbery in the second degree;  
4 (xii) Drive-by shooting;  
5 (xiii) Vehicular assault, when caused by the operation or driving  
6 of a vehicle by a person while under the influence of intoxicating  
7 liquor or any drug or by the operation or driving of a vehicle in a  
8 reckless manner; and

9 (xiv) Vehicular homicide, when proximately caused by the driving of  
10 any vehicle by any person while under the influence of intoxicating  
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
12 any vehicle in a reckless manner;

13 (b) Any conviction for a felony offense in effect at any time prior  
14 to July 1, 1976, that is comparable to a felony classified as a violent  
15 offense in (a) of this subsection; and

16 (c) Any federal or out-of-state conviction for an offense that  
17 under the laws of this state would be a felony classified as a violent  
18 offense under (a) or (b) of this subsection.

19 (55) "Work crew" means a program of partial confinement consisting  
20 of civic improvement tasks for the benefit of the community that  
21 complies with RCW 9.94A.725.

22 (56) "Work ethic camp" means an alternative incarceration program  
23 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
24 the cost of corrections by requiring offenders to complete a  
25 comprehensive array of real-world job and vocational experiences,  
26 character-building work ethics training, life management skills  
27 development, substance abuse rehabilitation, counseling, literacy  
28 training, and basic adult education.

29 (57) "Work release" means a program of partial confinement  
30 available to offenders who are employed or engaged as a student in a  
31 regular course of study at school.

32 **Sec. 4.** RCW 9.94A.030 and 2009 c 28 s 4 are each amended to read  
33 as follows:

34 Unless the context clearly requires otherwise, the definitions in  
35 this section apply throughout this chapter.

36 (1) "Board" means the indeterminate sentence review board created  
37 under chapter 9.95 RCW.

1 (2) "Collect," or any derivative thereof, "collect and remit," or  
2 "collect and deliver," when used with reference to the department,  
3 means that the department, either directly or through a collection  
4 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
5 and enforcing the offender's sentence with regard to the legal  
6 financial obligation, receiving payment thereof from the offender, and,  
7 consistent with current law, delivering daily the entire payment to the  
8 superior court clerk without depositing it in a departmental account.

9 (3) "Commission" means the sentencing guidelines commission.

10 (4) "Community corrections officer" means an employee of the  
11 department who is responsible for carrying out specific duties in  
12 supervision of sentenced offenders and monitoring of sentence  
13 conditions.

14 (5) "Community custody" means that portion of an offender's  
15 sentence of confinement in lieu of earned release time or imposed as  
16 part of a sentence under this chapter and served in the community  
17 subject to controls placed on the offender's movement and activities by  
18 the department.

19 ~~(6) ("Community custody range" means the minimum and maximum~~  
20 ~~period of community custody included as part of a sentence under RCW~~  
21 ~~9.94A.701, as established by the commission or the legislature under~~  
22 ~~RCW 9.94A.850.~~

23 ~~(7))~~ "Community protection zone" means the area within eight  
24 hundred eighty feet of the facilities and grounds of a public or  
25 private school.

26 ~~((8))~~ (7) "Community restitution" means compulsory service,  
27 without compensation, performed for the benefit of the community by the  
28 offender.

29 ~~((9))~~ (8) "Confinement" means total or partial confinement.

30 ~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant  
31 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of  
32 guilty, and acceptance of a plea of guilty.

33 ~~((11))~~ (10) "Crime-related prohibition" means an order of a court  
34 prohibiting conduct that directly relates to the circumstances of the  
35 crime for which the offender has been convicted, and shall not be  
36 construed to mean orders directing an offender affirmatively to  
37 participate in rehabilitative programs or to otherwise perform

1 affirmative conduct. However, affirmative acts necessary to monitor  
2 compliance with the order of a court may be required by the department.

3 ~~((+12+))~~ (11) "Criminal history" means the list of a defendant's  
4 prior convictions and juvenile adjudications, whether in this state, in  
5 federal court, or elsewhere.

6 (a) The history shall include, where known, for each conviction (i)  
7 whether the defendant has been placed on probation and the length and  
8 terms thereof; and (ii) whether the defendant has been incarcerated and  
9 the length of incarceration.

10 (b) A conviction may be removed from a defendant's criminal history  
11 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
12 a similar out-of-state statute, or if the conviction has been vacated  
13 pursuant to a governor's pardon.

14 (c) The determination of a defendant's criminal history is distinct  
15 from the determination of an offender score. A prior conviction that  
16 was not included in an offender score calculated pursuant to a former  
17 version of the sentencing reform act remains part of the defendant's  
18 criminal history.

19 ~~((+13+))~~ (12) "Criminal street gang" means any ongoing  
20 organization, association, or group of three or more persons, whether  
21 formal or informal, having a common name or common identifying sign or  
22 symbol, having as one of its primary activities the commission of  
23 criminal acts, and whose members or associates individually or  
24 collectively engage in or have engaged in a pattern of criminal street  
25 gang activity. This definition does not apply to employees engaged in  
26 concerted activities for their mutual aid and protection, or to the  
27 activities of labor and bona fide nonprofit organizations or their  
28 members or agents.

29 ~~((+14+))~~ (13) "Criminal street gang associate or member" means any  
30 person who actively participates in any criminal street gang and who  
31 intentionally promotes, furthers, or assists in any criminal act by the  
32 criminal street gang.

33 ~~((+15+))~~ (14) "Criminal street gang-related offense" means any  
34 felony or misdemeanor offense, whether in this state or elsewhere, that  
35 is committed for the benefit of, at the direction of, or in association  
36 with any criminal street gang, or is committed with the intent to  
37 promote, further, or assist in any criminal conduct by the gang, or is  
38 committed for one or more of the following reasons:

- 1 (a) To gain admission, prestige, or promotion within the gang;  
2 (b) To increase or maintain the gang's size, membership, prestige,  
3 dominance, or control in any geographical area;  
4 (c) To exact revenge or retribution for the gang or any member of  
5 the gang;  
6 (d) To obstruct justice, or intimidate or eliminate any witness  
7 against the gang or any member of the gang;  
8 (e) To directly or indirectly cause any benefit, aggrandizement,  
9 gain, profit, or other advantage for the gang, its reputation,  
10 influence, or membership; or  
11 (f) To provide the gang with any advantage in, or any control or  
12 dominance over any criminal market sector, including, but not limited  
13 to, manufacturing, delivering, or selling any controlled substance  
14 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
15 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
16 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
17 (chapter 9.68 RCW).

18 ~~((+16+))~~ (15) "Day fine" means a fine imposed by the sentencing  
19 court that equals the difference between the offender's net daily  
20 income and the reasonable obligations that the offender has for the  
21 support of the offender and any dependents.

22 ~~((+17+))~~ (16) "Day reporting" means a program of enhanced  
23 supervision designed to monitor the offender's daily activities and  
24 compliance with sentence conditions, and in which the offender is  
25 required to report daily to a specific location designated by the  
26 department or the sentencing court.

27 ~~((+18+))~~ (17) "Department" means the department of corrections.

28 ~~((+19+))~~ (18) "Determinate sentence" means a sentence that states  
29 with exactitude the number of actual years, months, or days of total  
30 confinement, of partial confinement, of community custody, the number  
31 of actual hours or days of community restitution work, or dollars or  
32 terms of a legal financial obligation. The fact that an offender  
33 through earned release can reduce the actual period of confinement  
34 shall not affect the classification of the sentence as a determinate  
35 sentence.

36 ~~((+20+))~~ (19) "Disposable earnings" means that part of the earnings  
37 of an offender remaining after the deduction from those earnings of any  
38 amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal  
2 services, whether denominated as wages, salary, commission, bonuses, or  
3 otherwise, and, notwithstanding any other provision of law making the  
4 payments exempt from garnishment, attachment, or other process to  
5 satisfy a court-ordered legal financial obligation, specifically  
6 includes periodic payments pursuant to pension or retirement programs,  
7 or insurance policies of any type, but does not include payments made  
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
9 or Title 74 RCW.

10 ~~((+21+))~~ (20) "Drug offender sentencing alternative" is a  
11 sentencing option available to persons convicted of a felony offense  
12 other than a violent offense or a sex offense and who are eligible for  
13 the option under RCW 9.94A.660.

14 ~~((+22+))~~ (21) "Drug offense" means:

15 (a) Any felony violation of chapter 69.50 RCW except possession of  
16 a controlled substance (RCW 69.50.4013) or forged prescription for a  
17 controlled substance (RCW 69.50.403);

18 (b) Any offense defined as a felony under federal law that relates  
19 to the possession, manufacture, distribution, or transportation of a  
20 controlled substance; or

21 (c) Any out-of-state conviction for an offense that under the laws  
22 of this state would be a felony classified as a drug offense under (a)  
23 of this subsection.

24 ~~((+23+))~~ (22) "Earned release" means earned release from  
25 confinement as provided in RCW 9.94A.728.

26 ~~((+24+))~~ (23) "Escape" means:

27 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
28 first degree (RCW 9A.76.110), escape in the second degree (RCW  
29 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
30 willful failure to return from work release (RCW 72.65.070), or willful  
31 failure to be available for supervision by the department while in  
32 community custody (RCW 72.09.310); or

33 (b) Any federal or out-of-state conviction for an offense that  
34 under the laws of this state would be a felony classified as an escape  
35 under (a) of this subsection.

36 ~~((+25+))~~ (24) "Felony traffic offense" means:

37 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
38 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-

1 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
2 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
3 felony physical control of a vehicle while under the influence of  
4 intoxicating liquor or any drug (RCW 46.61.504(6)); or

5 (b) Any federal or out-of-state conviction for an offense that  
6 under the laws of this state would be a felony classified as a felony  
7 traffic offense under (a) of this subsection.

8 ~~((+26+))~~ (25) "Fine" means a specific sum of money ordered by the  
9 sentencing court to be paid by the offender to the court over a  
10 specific period of time.

11 ~~((+27+))~~ (26) "First-time offender" means any person who has no  
12 prior convictions for a felony and is eligible for the first-time  
13 offender waiver under RCW 9.94A.650.

14 ~~((+28+))~~ (27) "Home detention" means a program of partial  
15 confinement available to offenders wherein the offender is confined in  
16 a private residence subject to electronic surveillance.

17 ~~((+29+))~~ (28) "Legal financial obligation" means a sum of money  
18 that is ordered by a superior court of the state of Washington for  
19 legal financial obligations which may include restitution to the  
20 victim, statutorily imposed crime victims' compensation fees as  
21 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
22 drug funds, court-appointed attorneys' fees, and costs of defense,  
23 fines, and any other financial obligation that is assessed to the  
24 offender as a result of a felony conviction. Upon conviction for  
25 vehicular assault while under the influence of intoxicating liquor or  
26 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
27 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
28 legal financial obligations may also include payment to a public agency  
29 of the expense of an emergency response to the incident resulting in  
30 the conviction, subject to RCW 38.52.430.

31 ~~((+30+))~~ (29) "Most serious offense" means any of the following  
32 felonies or a felony attempt to commit any of the following felonies:

33 (a) Any felony defined under any law as a class A felony or  
34 criminal solicitation of or criminal conspiracy to commit a class A  
35 felony;

36 (b) Assault in the second degree;

37 (c) Assault of a child in the second degree;

38 (d) Child molestation in the second degree;

- (e) Controlled substance homicide;
- (f) Extortion in the first degree;
- (g) Incest when committed against a child under age fourteen;
- (h) Indecent liberties;
- (i) Kidnapping in the second degree;
- (j) Leading organized crime;
- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- (s) Any other class B felony offense with a finding of sexual motivation;
- (t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;
- (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
- (v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- (ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is

1 included in the definition of indecent liberties under RCW  
2 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
3 or RCW 9A.44.100(1)(d) or (e) as it existed from July 25, 1993,  
4 through July 27, 1997;

5 (w) Any out-of-state conviction for a felony offense with a finding  
6 of sexual motivation if the minimum sentence imposed was ten years or  
7 more; provided that the out-of-state felony offense must be comparable  
8 to a felony offense under Title 9 or 9A RCW and the out-of-state  
9 definition of sexual motivation must be comparable to the definition of  
10 sexual motivation contained in this section.

11 (~~((31))~~) (30) "Nonviolent offense" means an offense which is not a  
12 violent offense.

13 (~~((32))~~) (31) "Offender" means a person who has committed a felony  
14 established by state law and is eighteen years of age or older or is  
15 less than eighteen years of age but whose case is under superior court  
16 jurisdiction under RCW 13.04.030 or has been transferred by the  
17 appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. In addition, for the purpose of community custody  
19 requirements under this chapter, "offender" also means a misdemeanor or  
20 gross misdemeanor probationer convicted of an offense included in RCW  
21 9.94A.501(1) and ordered by a superior court to probation under the  
22 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
23 9.95.210. Throughout this chapter, the terms "offender" and  
24 "defendant" are used interchangeably.

25 (~~((33))~~) (32) "Partial confinement" means confinement for no more  
26 than one year in a facility or institution operated or utilized under  
27 contract by the state or any other unit of government, or, if home  
28 detention or work crew has been ordered by the court, in an approved  
29 residence, for a substantial portion of each day with the balance of  
30 the day spent in the community. Partial confinement includes work  
31 release, home detention, work crew, and a combination of work crew and  
32 home detention.

33 (~~((34))~~) (33) "Pattern of criminal street gang activity" means:

34 (a) The commission, attempt, conspiracy, or solicitation of, or any  
35 prior juvenile adjudication of or adult conviction of, two or more of  
36 the following criminal street gang-related offenses:

37 (i) Any "serious violent" felony offense as defined in ((RCW



1 ~~9.94A.030~~) this section, excluding Homicide by Abuse (RCW 9A.32.055)  
2 and Assault of a Child 1 (RCW 9A.36.120);

3 (ii) Any "violent" offense as defined by (~~RCW 9.94A.030~~) this  
4 section, excluding Assault of a Child 2 (RCW 9A.36.130);

5 (iii) Deliver or Possession with Intent to Deliver a Controlled  
6 Substance (chapter 69.50 RCW);

7 (iv) Any violation of the firearms and dangerous weapon act  
8 (chapter 9.41 RCW);

9 (v) Theft of a Firearm (RCW 9A.56.300);

10 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

11 (vii) Malicious Harassment (RCW 9A.36.080);

12 (viii) Harassment where a subsequent violation or deadly threat is  
13 made (RCW 9A.46.020(2)(b));

14 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

15 (x) Any felony conviction by a person eighteen years of age or  
16 older with a special finding of involving a juvenile in a felony  
17 offense under RCW 9.94A.833;

18 (xi) Residential Burglary (RCW 9A.52.025);

19 (xii) Burglary 2 (RCW 9A.52.030);

20 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

21 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

22 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

23 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

24 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

25 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
26 9A.56.075);

27 (xix) Extortion 1 (RCW 9A.56.120);

28 (xx) Extortion 2 (RCW 9A.56.130);

29 (xxi) Intimidating a Witness (RCW 9A.72.110);

30 (xxii) Tampering with a Witness (RCW 9A.72.120);

31 (xxiii) Reckless Endangerment (RCW 9A.36.050);

32 (xxiv) Coercion (RCW 9A.36.070);

33 (xxv) Harassment (RCW 9A.46.020); or

34 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

35 (b) That at least one of the offenses listed in (a) of this  
36 subsection shall have occurred after July 1, 2008;

37 (c) That the most recent committed offense listed in (a) of this

1 subsection occurred within three years of a prior offense listed in (a)  
2 of this subsection; and

3 (d) Of the offenses that were committed in (a) of this subsection,  
4 the offenses occurred on separate occasions or were committed by two or  
5 more persons.

6 (~~((35))~~) (34) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a  
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this  
10 subsection, been convicted as an offender on at least two separate  
11 occasions, whether in this state or elsewhere, of felonies that under  
12 the laws of this state would be considered most serious offenses and  
13 would be included in the offender score under RCW 9.94A.525; provided  
14 that of the two or more previous convictions, at least one conviction  
15 must have occurred before the commission of any of the other most  
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
18 of a child in the first degree, child molestation in the first degree,  
19 rape in the second degree, rape of a child in the second degree, or  
20 indecent liberties by forcible compulsion; (B) any of the following  
21 offenses with a finding of sexual motivation: Murder in the first  
22 degree, murder in the second degree, homicide by abuse, kidnapping in  
23 the first degree, kidnapping in the second degree, assault in the first  
24 degree, assault in the second degree, assault of a child in the first  
25 degree, assault of a child in the second degree, or burglary in the  
26 first degree; or (C) an attempt to commit any crime listed in this  
27 subsection (~~((35))~~) (34)(b)(i); and

28 (ii) Has, before the commission of the offense under (b)(i) of this  
29 subsection, been convicted as an offender on at least one occasion,  
30 whether in this state or elsewhere, of an offense listed in (b)(i) of  
31 this subsection or any federal or out-of-state offense or offense under  
32 prior Washington law that is comparable to the offenses listed in

33 (b)(i) of this subsection. A conviction for rape of a child in the  
34 first degree constitutes a conviction under (b)(i) of this subsection  
35 only when the offender was sixteen years of age or older when the  
36 offender committed the offense. A conviction for rape of a child in  
37 the second degree constitutes a conviction under (b)(i) of this

subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((36))~~ (35) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

~~((37))~~ (36) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((38))~~ (37) "Public school" has the same meaning as in RCW 28A.150.010.

~~((39))~~ (38) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((40))~~ (39) "Risk assessment" means the application of ~~((an objective))~~ the risk instrument ~~((supported by research and adopted by))~~ recommended to the department ~~((for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations))~~ by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((41))~~ (40) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating  
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
3 while under the influence of intoxicating liquor or any drug (RCW  
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
5 attended vehicle (RCW 46.52.020(5)); or

6 (b) Any federal, out-of-state, county, or municipal conviction for  
7 an offense that under the laws of this state would be classified as a  
8 serious traffic offense under (a) of this subsection.

9 (~~((42+))~~) (41) "Serious violent offense" is a subcategory of violent  
10 offense and means:

11 (a)(i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; or

19 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
20 commit one of these felonies; or

21 (b) Any federal or out-of-state conviction for an offense that  
22 under the laws of this state would be a felony classified as a serious  
23 violent offense under (a) of this subsection.

24 (~~((43+))~~) (42) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
26 RCW 9A.44.130(12);

27 (ii) A violation of RCW 9A.64.020;

28 (iii) A felony that is a violation of chapter 9.68A RCW other than  
29 RCW 9.68A.080; or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
31 criminal solicitation, or criminal conspiracy to commit such crimes;

32 (b) Any conviction for a felony offense in effect at any time prior  
33 to July 1, 1976, that is comparable to a felony classified as a sex  
34 offense in (a) of this subsection;

35 (c) A felony with a finding of sexual motivation under RCW  
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex  
2 offense under (a) of this subsection.

3 ~~((+44+))~~ (43) "Sexual motivation" means that one of the purposes  
4 for which the defendant committed the crime was for the purpose of his  
5 or her sexual gratification.

6 ~~((+45+))~~ (44) "Standard sentence range" means the sentencing  
7 court's discretionary range in imposing a nonappealable sentence.

8 ~~((+46+))~~ (45) "Statutory maximum sentence" means the maximum length  
9 of time for which an offender may be confined as punishment for a crime  
10 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
11 the crime, or other statute defining the maximum penalty for a crime.

12 ~~((+47+))~~ (46) "Stranger" means that the victim did not know the  
13 offender twenty-four hours before the offense.

14 ~~((+48+))~~ (47) "Total confinement" means confinement inside the  
15 physical boundaries of a facility or institution operated or utilized  
16 under contract by the state or any other unit of government for twenty-  
17 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 ~~((+49+))~~ (48) "Transition training" means written and verbal  
19 instructions and assistance provided by the department to the offender  
20 during the two weeks prior to the offender's successful completion of  
21 the work ethic camp program. The transition training shall include  
22 instructions in the offender's requirements and obligations during the  
23 offender's period of community custody.

24 ~~((+50+))~~ (49) "Victim" means any person who has sustained  
25 emotional, psychological, physical, or financial injury to person or  
26 property as a direct result of the crime charged.

27 ~~((+51+))~~ (50) "Violent offense" means:

28 (a) Any of the following felonies:

29 (i) Any felony defined under any law as a class A felony or an  
30 attempt to commit a class A felony;

31 (ii) Criminal solicitation of or criminal conspiracy to commit a  
32 class A felony;

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

35 (v) Indecent liberties if committed by forcible compulsion;

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;

2 (x) Extortion in the first degree;

3 (xi) Robbery in the second degree;

4 (xii) Drive-by shooting;

5 (xiii) Vehicular assault, when caused by the operation or driving  
6 of a vehicle by a person while under the influence of intoxicating  
7 liquor or any drug or by the operation or driving of a vehicle in a  
8 reckless manner; and

9 (xiv) Vehicular homicide, when proximately caused by the driving of  
10 any vehicle by any person while under the influence of intoxicating  
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
12 any vehicle in a reckless manner;

13 (b) Any conviction for a felony offense in effect at any time prior  
14 to July 1, 1976, that is comparable to a felony classified as a violent  
15 offense in (a) of this subsection; and

16 (c) Any federal or out-of-state conviction for an offense that  
17 under the laws of this state would be a felony classified as a violent  
18 offense under (a) or (b) of this subsection.

19 ((+52+)) (51) "Work crew" means a program of partial confinement  
20 consisting of civic improvement tasks for the benefit of the community  
21 that complies with RCW 9.94A.725.

22 ((+53+)) (52) "Work ethic camp" means an alternative incarceration  
23 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
24 lower the cost of corrections by requiring offenders to complete a  
25 comprehensive array of real-world job and vocational experiences,  
26 character-building work ethics training, life management skills  
27 development, substance abuse rehabilitation, counseling, literacy  
28 training, and basic adult education.

29 ((+54+)) (53) "Work release" means a program of partial confinement  
30 available to offenders who are employed or engaged as a student in a  
31 regular course of study at school.

32 **Sec. 5.** RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read  
33 as follows:

34 (1) If an offender is sentenced to the custody of the department  
35 for one of the following crimes, the court shall ~~((impose a term of~~  
36 ~~community custody for the community custody range established under RCW~~  
37 ~~9.94A.850 or up to the period of earned release awarded pursuant to RCW~~

1 ~~9.94A.728 (1) and (2), whichever is longer)), in addition to the other~~  
2 ~~terms of the sentence, sentence the offender to community custody for~~  
3 ~~three years:~~

4 (a) A sex offense not sentenced under RCW 9.94A.507;

5 (b) A serious violent offense; or

6 (c) ~~((A crime against persons under RCW 9.94A.411(2),~~

7 ~~(d) An offense involving the unlawful possession of a firearm under~~  
8 ~~RCW 9.41.040, where the offender is a criminal street gang member or~~  
9 ~~associate;~~

10 ~~(e) A felony offender under chapter 69.50 or 69.52 RCW)) A~~  
11 violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006,  
12 when a court sentences the person to a term of confinement of one year  
13 or less.

14 (2) ~~((If an offender is sentenced to a term of confinement of one~~  
15 ~~year or less for a violation of RCW 9A.44.130(11)(a), the court shall~~  
16 ~~impose a term of community custody for the community custody range~~  
17 ~~established under RCW 9.94A.850 or up to the period of earned release~~  
18 ~~awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)) A~~  
19 court shall, in addition to the other terms of the sentence, sentence  
20 an offender to community custody for eighteen months when the court  
21 sentences the person to the custody of the department for a violent  
22 offense that is not considered a serious violent offense.

23 (3) A court shall, in addition to the other terms of the sentence,  
24 sentence an offender to community custody for one year when the court  
25 sentences the person to the custody of the department for:

26 (a) Any crime against persons under RCW 9.94A.411(2);

27 (b) An offense involving the unlawful possession of a firearm under  
28 RCW 9.41.040, where the offender is a criminal street gang member or  
29 associate; or

30 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on  
31 or after July 1, 2000.

32 ~~((3))~~ (4) If an offender is sentenced under the drug offender  
33 sentencing alternative, the court shall impose community custody as  
34 provided in RCW 9.94A.660.

35 ~~((4))~~ (5) If an offender is sentenced under the special sexual  
36 offender sentencing alternative, the court shall impose community  
37 custody as provided in RCW 9.94A.670.

1        ~~((+5+))~~ (6) If an offender is sentenced to a work ethic camp, the  
2 court shall impose community custody as provided in RCW 9.94A.690.

3        ~~((+6+))~~ (7) If a sex offender is sentenced as a nonpersistent  
4 offender pursuant to RCW 9.94A.507, the court shall impose community  
5 custody as provided in that section.

6        ~~((+7) If the offender is a criminal street gang associate or member  
7 and is found guilty of unlawful possession of a firearm under RCW  
8 9.41.040, the court shall impose a term of community custody under  
9 subsection (1)(d) of this section))~~ (8) The term of community custody

10 specified by this section shall be reduced by the court whenever an  
11 offender's standard range term of confinement in combination with the  
12 term of community custody exceeds the statutory maximum for the crime  
13 as provided in RCW 9A.20.021.

14        Sec. 6. RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read  
15 as follows:

16        (1) Every person who is sentenced to a period of community custody  
17 shall report to and be placed under the supervision of the department,  
18 subject to RCW 9.94A.501.

19        (2)(a) The department shall assess the offender's risk of reoffense  
20 and may establish and modify additional conditions of community custody  
21 based upon the risk to community safety.

22        (b) Within the funds available for community custody, the  
23 department shall determine conditions ~~((and duration of community~~  
24 ~~custody))~~ on the basis of risk to community safety, and shall supervise  
25 offenders during community custody on the basis of risk to community  
26 safety and conditions imposed by the court. The secretary shall adopt  
27 rules to implement the provisions of this subsection (2)(b).

28        (3) If the offender is supervised by the department, the department  
29 shall at a minimum instruct the offender to:

30        (a) Report as directed to a community corrections officer;

31        (b) Remain within prescribed geographical boundaries;

32        (c) Notify the community corrections officer of any change in the  
33 offender's address or employment;

34        (d) Pay the supervision fee assessment; and

35        (e) Disclose the fact of supervision to any mental health or  
36 chemical dependency treatment provider, as required by RCW 9.94A.722.



1 (4) The department may require the offender to participate in  
2 rehabilitative programs, or otherwise perform affirmative conduct, and  
3 to obey all laws.

4 (5) If the offender was sentenced pursuant to a conviction for a  
5 sex offense, the department may impose electronic monitoring. Within  
6 the resources made available by the department for this purpose, the  
7 department shall carry out any electronic monitoring using the most  
8 appropriate technology given the individual circumstances of the  
9 offender. As used in this section, "electronic monitoring" means the  
10 monitoring of an offender using an electronic offender tracking system  
11 including, but not limited to, a system using radio frequency or active  
12 or passive global positioning system technology.

13 (6) The department may not impose conditions that are contrary to  
14 those ordered by the court and may not contravene or decrease court-  
15 imposed conditions.

16 (7) (a) The department shall notify the offender in writing of any  
17 additional conditions or modifications.

18 (b) By the close of the next business day after receiving notice of  
19 a condition imposed or modified by the department, an offender may  
20 request an administrative review under rules adopted by the department.  
21 The condition shall remain in effect unless the reviewing officer finds  
22 that it is not reasonably related to the crime of conviction, the  
23 offender's risk of reoffending, or the safety of the community.

24 (8) The department may require offenders to pay for special  
25 services rendered including electronic monitoring, day reporting, and  
26 telephone reporting, dependent on the offender's ability to pay. The  
27 department may pay for these services for offenders who are not able to  
28 pay.

29 (9) (a) When a sex offender has been sentenced pursuant to RCW  
30 9.94A.507, the department shall assess the offender's risk of  
31 recidivism and shall recommend to the board any additional or modified  
32 conditions based upon the offender's risk to community safety and may  
33 recommend affirmative conduct or electronic monitoring consistent with  
34 subsections (4) through (6) of this section.

35 (b) The board may impose conditions in addition to court-ordered  
36 conditions. The board must consider and may impose department-  
37 recommended conditions.

1 (c) By the close of the next business day, after receiving notice  
2 of a condition imposed by the board or the department, an offender may  
3 request an administrative hearing under rules adopted by the board.  
4 The condition shall remain in effect unless the hearing examiner finds  
5 that it is not reasonably related to any of the following:

- 6 (i) The crime of conviction;  
7 (ii) The offender's risk of reoffending;  
8 (iii) The safety of the community.

9 (d) If the department finds that an emergency exists requiring the  
10 immediate imposition of additional conditions in order to prevent the  
11 offender from committing a crime, the department may impose such  
12 conditions. The department may not impose conditions that are contrary  
13 to those set by the board or the court and may not contravene or  
14 decrease court-imposed or board-imposed conditions. Conditions imposed  
15 under this subsection shall take effect immediately after notice to the  
16 offender by personal service, but shall not remain in effect longer  
17 than seven working days unless approved by the board.

18 (10) In setting, modifying, and enforcing conditions of community  
19 custody, the department shall be deemed to be performing a  
20 quasi-judicial function.

21 **Sec. 7.** RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read  
22 as follows:

23 (1) Community custody shall begin: (a) Upon completion of the term  
24 of confinement; or (b) ~~((at such time as the offender is transferred to~~  
25 ~~community custody in lieu of earned release in accordance with RCW~~  
26 ~~9.94A.728 (1) or (2); or (c))~~ at the time of sentencing if no term of  
27 confinement is ordered.

28 (2) When an offender is sentenced to community custody, the  
29 offender is subject to the conditions of community custody as of the  
30 date of sentencing, unless otherwise ordered by the court.

31 ~~((3) When an offender is sentenced to a community custody range~~  
32 ~~pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge~~  
33 ~~the offender from community custody on a date determined by the~~  
34 ~~department, which the department may modify, based on risk and~~  
35 ~~performance of the offender, within the range or at the end of the~~  
36 ~~period of earned release, whichever is later.))~~

1       **Sec. 8.** RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read  
2 as follows:

3       (1) A sentencing guidelines commission is established as an agency  
4 of state government.

5       (2) The legislature finds that the commission, having accomplished  
6 its original statutory directive to implement this chapter, and having  
7 expertise in sentencing practice and policies, shall:

8       (a) Evaluate state sentencing policy, to include whether the  
9 sentencing ranges and standards are consistent with and further:

10       (i) The purposes of this chapter as defined in RCW 9.94A.010; and

11       (ii) The intent of the legislature to emphasize confinement for the  
12 violent offender and alternatives to confinement for the nonviolent  
13 offender.

14       The commission shall provide the governor and the legislature with  
15 its evaluation and recommendations under this subsection not later than  
16 December 1, 1996, and every two years thereafter;

17       (b) Recommend to the legislature revisions or modifications to the  
18 standard sentence ranges, state sentencing policy, prosecuting  
19 standards, and other standards. If implementation of the revisions or  
20 modifications would result in exceeding the capacity of correctional  
21 facilities, then the commission shall accompany its recommendation with  
22 an additional list of standard sentence ranges which are consistent  
23 with correction capacity;

24       (c) Study the existing criminal code and from time to time make  
25 recommendations to the legislature for modification;

26       (d)(i) Serve as a clearinghouse and information center for the  
27 collection, preparation, analysis, and dissemination of information on  
28 state and local adult and juvenile sentencing practices; (ii) develop  
29 and maintain a computerized adult and juvenile sentencing information  
30 system by individual superior court judge consisting of offender,  
31 offense, history, and sentence information entered from judgment and  
32 sentence forms for all adult felons; and (iii) conduct ongoing research  
33 regarding adult and juvenile sentencing guidelines, use of total  
34 confinement and alternatives to total confinement, plea bargaining, and  
35 other matters relating to the improvement of the adult criminal justice  
36 system and the juvenile justice system;

37       (e) Assume the powers and duties of the juvenile disposition  
38 standards commission after June 30, 1996;

1 (f) Evaluate the effectiveness of existing disposition standards  
2 and related statutes in implementing policies set forth in RCW  
3 13.40.010 generally, specifically review the guidelines relating to the  
4 confinement of minor and first-time offenders as well as the use of  
5 diversion, and review the application of current and proposed juvenile  
6 sentencing standards and guidelines for potential adverse impacts on  
7 the sentencing outcomes of racial and ethnic minority youth;

8 (g) Solicit the comments and suggestions of the juvenile justice  
9 community concerning disposition standards, and make recommendations to  
10 the legislature regarding revisions or modifications of the standards.  
11 The evaluations shall be submitted to the legislature on December 1 of  
12 each odd-numbered year. The department of social and health services  
13 shall provide the commission with available data concerning the  
14 implementation of the disposition standards and related statutes and  
15 their effect on the performance of the department's responsibilities  
16 relating to juvenile offenders, and with recommendations for  
17 modification of the disposition standards. The administrative office  
18 of the courts shall provide the commission with available data on  
19 diversion, including the use of youth court programs, and dispositions  
20 of juvenile offenders under chapter 13.40 RCW; and

21 (h) Not later than December 1, 1997, and at least every two years  
22 thereafter, based on available information, report to the governor and  
23 the legislature on:

24 (i) Racial disproportionality in juvenile and adult sentencing,  
25 and, if available, the impact that diversions, such as youth courts,  
26 have on racial disproportionality in juvenile prosecution,  
27 adjudication, and sentencing;

28 (ii) The capacity of state and local juvenile and adult facilities  
29 and resources; and

30 (iii) Recidivism information on adult and juvenile offenders.

31 (3) Each of the commission's recommended standard sentence ranges  
32 shall include one or more of the following: Total confinement, partial  
33 confinement, community supervision, community restitution, and a fine.

34 (4) The standard sentence ranges of total and partial confinement  
35 under this chapter, except as provided in RCW 9.94A.517, are subject to  
36 the following limitations:

37 (a) If the maximum term in the range is one year or less, the  
38 minimum term in the range shall be no less than one-third of the

1 maximum term in the range, except that if the maximum term in the range  
2 is ninety days or less, the minimum term may be less than one-third of  
3 the maximum;

4 (b) If the maximum term in the range is greater than one year, the  
5 minimum term in the range shall be no less than seventy-five percent of  
6 the maximum term in the range, except that for murder in the second  
7 degree in seriousness level XIV under RCW 9.94A.510, the minimum term  
8 in the range shall be no less than fifty percent of the maximum term in  
9 the range; and

10 (c) The maximum term of confinement in a range may not exceed the  
11 statutory maximum for the crime as provided in RCW 9A.20.021.

12 ~~(5) ((a) Not later than December 31 of each year, the commission~~  
13 ~~may propose modifications to the community custody ranges to be~~  
14 ~~included in sentences under RCW 9.94A.701. The ranges shall be based~~  
15 ~~on the principles in RCW 9.94A.010, and shall take into account the~~  
16 ~~funds available to the department for community custody. The minimum~~  
17 ~~term in each range shall not be less than one half of the maximum term.~~

18 ~~(b) The legislature may, by enactment of a legislative bill, adopt~~  
19 ~~or modify the community custody ranges proposed by the commission. If~~  
20 ~~the legislature fails to adopt or modify the initial ranges in its next~~  
21 ~~regular session after they are proposed, the proposed ranges shall take~~  
22 ~~effect without legislative approval for crimes committed on or after~~  
23 ~~July 1, 2000.~~

24 ~~(c) When the commission proposes modifications to ranges pursuant~~  
25 ~~to this subsection, the legislature may, by enactment of a bill, adopt~~  
26 ~~or modify the ranges proposed by the commission for crimes committed on~~  
27 ~~or after July 1 of the year after they were proposed. Unless the~~  
28 ~~legislature adopts or modifies the commission's proposal in its next~~  
29 ~~regular session, the proposed ranges shall not take effect.~~

30 ~~(6))~~ The commission shall exercise its duties under this section  
31 in conformity with chapter 34.05 RCW.

32 NEW SECTION. Sec. 9. The department of corrections shall  
33 recalculate the term of community custody and reset the date that  
34 community custody will end for each offender currently in confinement  
35 or serving a term of community custody for a crime specified in RCW  
36 9.94A.701. The recalculation shall not extend a term of community  
37 custody beyond that to which an offender is currently subject.

1       **Sec. 10.**   2008 c 231 s 6 (uncodified) is amended to read as  
2 follows:

3       The existing sentencing reform act contains numerous provisions for  
4 supervision of different types of offenders. This duplication has  
5 caused great confusion for judges, lawyers, offenders, and the  
6 department of corrections, and often results in inaccurate sentences.  
7 The clarifications in this act are intended to support continued  
8 discussions by the sentencing guidelines commission with the courts and  
9 the criminal justice community to identify and propose policy changes  
10 that will further simplify and improve the sentencing reform act  
11 relating to the supervision of offenders. The sentencing guidelines  
12 commission shall submit policy change proposals to the legislature on  
13 or before December 1, 2008.

14       Sections 7 through 58 of this act are intended to simplify the  
15 supervision provisions of the sentencing reform act and increase the  
16 uniformity of its application. These sections are not intended to  
17 either increase or decrease the authority of sentencing courts or the  
18 department relating to supervision, except for those provisions  
19 instructing the court to apply the provisions of the current community  
20 custody law to offenders sentenced after July 1, 2009, but who  
21 committed their crime prior to August 1, 2009, to the extent that such  
22 application is constitutionally permissible.

23       This will effect a change for offenders who committed their crimes  
24 prior to the offender accountability act, chapter 196, Laws of 1999.  
25 These offenders will be ordered to a term of community custody rather  
26 than community placement or community supervision. To the extent  
27 constitutionally permissible, the terms of the offender's supervision  
28 will be as provided in current law. With the exception of this change,  
29 the legislature does not intend to make, and no provision of sections  
30 7 through 58 of this act may be construed as making, a substantive  
31 change to the supervision provisions of the sentencing reform act.

32       ~~((It is the intent of the legislature to reaffirm that section 3,~~  
33 ~~chapter 379, Laws of 2003, expires July 1, 2010.))~~

34       **Sec. 11.**   RCW 9.95.220 and 1957 c 227 s 5 are each amended to read  
35 as follows:

36       (1) Except as provided in subsection (2) of this section, whenever  
37 the state parole officer or other officer under whose supervision the

1 probationer has been placed shall have reason to believe such  
2 probationer is violating the terms of his or her probation, or engaging  
3 in criminal practices, or is abandoned to improper associates, or  
4 living a vicious life, he or she shall cause the probationer to be  
5 brought before the court wherein the probation was granted. For this  
6 purpose any peace officer or state parole officer may rearrest any such  
7 person without warrant or other process. The court may thereupon in  
8 its discretion without notice revoke and terminate such probation. In  
9 the event the judgment has been pronounced by the court and the  
10 execution thereof suspended, the court may revoke such suspension,  
11 whereupon the judgment shall be in full force and effect, and the  
12 defendant shall be delivered to the sheriff to be transported to the  
13 penitentiary or reformatory as the case may be. If the judgment has  
14 not been pronounced, the court shall pronounce judgment after such  
15 revocation of probation and the defendant shall be delivered to the  
16 sheriff to be transported to the penitentiary or reformatory, in  
17 accordance with the sentence imposed.

18 (2) If a probationer is being supervised by the department of  
19 corrections pursuant to RCW 9.95.204, the department shall have  
20 authority to issue a warrant for the arrest of an offender who violates  
21 a condition of community custody, as provided in RCW 9.94A.716. Any  
22 sanctions shall be imposed by the department pursuant to RCW 9.94A.737.  
23 The department shall provide a copy of the violation hearing report to  
24 the sentencing court in a timely manner. Nothing in this subsection is  
25 intended to limit the power of the sentencing court to respond to a  
26 probationer's violation of conditions.

27 **Sec. 12.** RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read  
28 as follows:

29 (1)(a) An offender who violates any condition or requirement of a  
30 sentence may be sanctioned with up to sixty days' confinement for each  
31 violation.

32 (b) In lieu of confinement, an offender may be sanctioned with work  
33 release, home detention with electronic monitoring, work crew,  
34 community restitution, inpatient treatment, daily reporting, curfew,  
35 educational or counseling sessions, supervision enhanced through  
36 electronic monitoring, or any other sanctions available in the  
37 community.

1 (2) If an offender was under community custody pursuant to one of  
2 the following statutes, the offender may be sanctioned as follows:

3 (a) If the offender was transferred to community custody in lieu of  
4 earned early release in accordance with RCW 9.94A.728(2), the offender  
5 may be transferred to a more restrictive confinement status to serve up  
6 to the remaining portion of the sentence, less credit for any period  
7 actually spent in community custody or in detention awaiting  
8 disposition of an alleged violation.

9 (b) If the offender was sentenced under the drug offender  
10 sentencing alternative set out in RCW 9.94A.660, the offender may be  
11 sanctioned in accordance with that section.

12 (c) If the offender was sentenced under the special sexual offender  
13 sentencing alternative set out in RCW 9.94A.670, the suspended sentence  
14 may be revoked and the offender committed to serve the original  
15 sentence of confinement.

16 (d) If the offender was sentenced to a work ethic camp pursuant to  
17 RCW 9.94A.690, the offender may be reclassified to serve the unexpired  
18 term of his or her sentence in total confinement.

19 (e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the  
20 offender may be transferred to a more restrictive confinement status to  
21 serve up to the remaining portion of the sentence, less credit for any  
22 period actually spent in community custody or in detention awaiting  
23 disposition of an alleged violation.

24 (3) If a probationer is being supervised by the department pursuant  
25 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
26 sanctioned pursuant to subsection (1) of this section. The department  
27 shall have authority to issue a warrant for the arrest of an offender  
28 who violates a condition of community custody, as provided in RCW  
29 9.94A.716. Any sanctions shall be imposed by the department pursuant  
30 to RCW 9.94A.737. The department shall provide a copy of the violation  
31 hearing report to the sentencing court in a timely manner. Nothing in  
32 this subsection is intended to limit the power of the sentencing court  
33 to respond to a probationer's violation of conditions.

34 **Sec. 13.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to  
35 read as follows:

36 (1) If an offender violates any condition or requirement of  
37 community custody, the department may transfer the offender to a more



1 restrictive confinement status to serve up to the remaining portion of  
2 the sentence, less credit for any period actually spent in community  
3 custody or in detention awaiting disposition of an alleged violation  
4 and subject to the limitations of subsection (3) of this section.

5 (2) If an offender has not completed his or her maximum term of  
6 total confinement and is subject to a third violation hearing for any  
7 violation of community custody and is found to have committed the  
8 violation, the department shall return the offender to total  
9 confinement in a state correctional facility to serve up to the  
10 remaining portion of his or her sentence, unless it is determined that  
11 returning the offender to a state correctional facility would  
12 substantially interfere with the offender's ability to maintain  
13 necessary community supports or to participate in necessary treatment  
14 or programming and would substantially increase the offender's  
15 likelihood of reoffending.

16 (3)(a) For a sex offender sentenced to a term of community custody  
17 under RCW 9.94A.670 who violates any condition of community custody,  
18 the department may impose a sanction of up to sixty days' confinement  
19 in a local correctional facility for each violation. If the department  
20 imposes a sanction, the department shall submit within seventy-two  
21 hours a report to the court and the prosecuting attorney outlining the  
22 violation or violations and the sanctions imposed.

23 (b) For a sex offender sentenced to a term of community custody  
24 under RCW 9.94A.710 who violates any condition of community custody  
25 after having completed his or her maximum term of total confinement,  
26 including time served on community custody in lieu of earned release,  
27 the department may impose a sanction of up to sixty days in a local  
28 correctional facility for each violation.

29 (c) For an offender sentenced to a term of community custody under  
30 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,  
31 for a crime committed on or after July 1, 2000, who violates any  
32 condition of community custody after having completed his or her  
33 maximum term of total confinement, including time served on community  
34 custody in lieu of earned release, the department may impose a sanction  
35 of up to sixty days in total confinement for each violation. The  
36 department may impose sanctions such as work release, home detention  
37 with electronic monitoring, work crew, community restitution, inpatient

1 treatment, daily reporting, curfew, educational or counseling sessions,  
2 supervision enhanced through electronic monitoring, or any other  
3 sanctions available in the community.

4 (d) For an offender sentenced to a term of community placement  
5 under RCW 9.94A.705 who violates any condition of community placement  
6 after having completed his or her maximum term of total confinement,  
7 including time served on community custody in lieu of earned release,  
8 the department may impose a sanction of up to sixty days in total  
9 confinement for each violation. The department may impose sanctions  
10 such as work release, home detention with electronic monitoring, work  
11 crew, community restitution, inpatient treatment, daily reporting,  
12 curfew, educational or counseling sessions, supervision enhanced  
13 through electronic monitoring, or any other sanctions available in the  
14 community.

15 (e) If a probationer is being supervised by the department pursuant  
16 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
17 sanctioned by the department pursuant to (c) of this subsection. The  
18 department shall have authority to issue a warrant for the arrest of an  
19 offender who violates a condition of community custody, as provided in  
20 RCW 9.94A.740. The department shall provide a copy of the violation  
21 hearing report to the sentencing court in a timely manner. Nothing in  
22 this subsection is intended to limit the power of the sentencing court  
23 to respond to a probationer's violation of conditions.

24 (4) If an offender has been arrested for a new felony offense while  
25 under community supervision, community custody, or community placement,  
26 the department shall hold the offender in total confinement until a  
27 hearing before the department as provided in this section or until the  
28 offender has been formally charged for the new felony offense,  
29 whichever is earlier. Nothing in this subsection shall be construed as  
30 to permit the department to hold an offender past his or her maximum  
31 term of total confinement if the offender has not completed the maximum  
32 term of total confinement or to permit the department to hold an  
33 offender past the offender's term of community supervision, community  
34 custody, or community placement.

35 (5) The department shall be financially responsible for any portion  
36 of the sanctions authorized by this section that are served in a local  
37 correctional facility as the result of action by the department.

1 (6) If an offender is accused of violating any condition or  
2 requirement of community custody, he or she is entitled to a hearing  
3 before the department prior to the imposition of sanctions. The  
4 hearing shall be considered as offender disciplinary proceedings and  
5 shall not be subject to chapter 34.05 RCW. The department shall  
6 develop hearing procedures and a structure of graduated sanctions.

7 (7) The hearing procedures required under subsection (6) of this  
8 section shall be developed by rule and include the following:

9 (a) Hearing officers shall report through a chain of command  
10 separate from that of community corrections officers;

11 (b) The department shall provide the offender with written notice  
12 of the violation, the evidence relied upon, and the reasons the  
13 particular sanction was imposed. The notice shall include a statement  
14 of the rights specified in this subsection, and the offender's right to  
15 file a personal restraint petition under court rules after the final  
16 decision of the department;

17 (c) The hearing shall be held unless waived by the offender, and  
18 shall be electronically recorded. For offenders not in total  
19 confinement, the hearing shall be held within fifteen working days, but  
20 not less than twenty-four hours, after notice of the violation. For  
21 offenders in total confinement, the hearing shall be held within five  
22 working days, but not less than twenty-four hours, after notice of the  
23 violation;

24 (d) The offender shall have the right to: (i) Be present at the  
25 hearing; (ii) have the assistance of a person qualified to assist the  
26 offender in the hearing, appointed by the hearing officer if the  
27 offender has a language or communications barrier; (iii) testify or  
28 remain silent; (iv) call witnesses and present documentary evidence;  
29 and (v) question witnesses who appear and testify; and

30 (e) The sanction shall take effect if affirmed by the hearing  
31 officer. Within seven days after the hearing officer's decision, the  
32 offender may appeal the decision to a panel of three reviewing officers  
33 designated by the secretary or by the secretary's designee. The  
34 sanction shall be reversed or modified if a majority of the panel finds  
35 that the sanction was not reasonably related to any of the following:  
36 (i) The crime of conviction; (ii) the violation committed; (iii) the  
37 offender's risk of reoffending; or (iv) the safety of the community.

1 (8) For purposes of this section, no finding of a violation of  
2 conditions may be based on unconfirmed or unconfirmable allegations.

3 (9) The department shall work with the Washington association of  
4 sheriffs and police chiefs to establish and operate an electronic  
5 monitoring program for low-risk offenders who violate the terms of  
6 their community custody. Between January 1, 2006, and December 31,  
7 2006, the department shall endeavor to place at least one hundred low-  
8 risk community custody violators on the electronic monitoring program  
9 per day if there are at least that many low-risk offenders who qualify  
10 for the electronic monitoring program.

11 (10) Local governments, their subdivisions and employees, the  
12 department and its employees, and the Washington association of  
13 sheriffs and police chiefs and its employees shall be immune from civil  
14 liability for damages arising from incidents involving low-risk  
15 offenders who are placed on electronic monitoring unless it is shown  
16 that an employee acted with gross negligence or bad faith.

17 **Sec. 14.** RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read  
18 as follows:

19 The procedure for imposing sanctions for violations of sentence  
20 conditions or requirements is as follows:

21 (1) If the offender was sentenced under the drug offender  
22 sentencing alternative, any sanctions shall be imposed by the  
23 department or the court pursuant to RCW 9.94A.660.

24 (2) If the offender was sentenced under the special sexual offender  
25 sentencing alternative, any sanctions shall be imposed by the  
26 department or the court pursuant to RCW 9.94A.670.

27 (3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any  
28 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

29 (4) In any other case, if the offender is being supervised by the  
30 department, any sanctions shall be imposed by the department pursuant  
31 to RCW 9.94A.737. If a probationer is being supervised by the  
32 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon  
33 receipt of a violation hearing report from the department, the court  
34 retains any authority that those statutes provide to respond to a  
35 probationer's violation of conditions.

36 (5) If the offender is not being supervised by the department, any  
37 sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

1        NEW SECTION.    **Sec. 15.**    The legislature directs the sentencing  
2 guidelines commission to include in its biennial report to the  
3 legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later  
4 than December 1, 2011, an analysis of the impact on recidivism of the  
5 following:

6        (1) The supervision of offenders pursuant to sections 1 and 2 of  
7 this act;

8        (2) The department's authority to issue warrants for offenders  
9 under its supervision who are sentenced for misdemeanor and gross  
10 misdemeanor offenses in superior court; and

11        (3) The community custody terms of supervision pursuant to section  
12 5 of this act.

13        NEW SECTION.    **Sec. 16.**    The following acts or parts of acts are  
14 each repealed:

15        (1) RCW 9.95.206 (Misdemeanant probation services--Offender  
16 classification system--Supervision standards) and 1996 c 298 s 2; and

17        (2) RCW 9.95.212 (Standards for supervision of misdemeanant  
18 probationers) and 1998 c 245 s 2 & 1995 1st sp.s. c 19 s 31.

19        NEW SECTION.    **Sec. 17.**    2008 c 231 s 60 (uncodified) is repealed.

20        NEW SECTION.    **Sec. 18.**    (1) Sections 1, 3, 11, 13, 16, 17, and 20  
21 of this act are necessary for the immediate preservation of the public  
22 peace, health, or safety, or support of the state government and its  
23 existing public institutions, and take effect immediately.

24        (2) Sections 2, 4 through 10, 12, and 14 of this act take effect  
25 August 1, 2009.

26        NEW SECTION.    **Sec. 19.**    Sections 1, 3, and 13 of this act expire  
27 August 1, 2009.

28        NEW SECTION.    **Sec. 20.**    This act applies retroactively and  
29 prospectively regardless of whether the offender is currently on  
30 community custody or probation with the department, currently  
31 incarcerated with a term of community custody or probation with the

1 department, or sentenced after the effective date of this section.

--- END ---

CHRISTINE O. GREGOIRE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

*P.O. Box 40002 · Olympia, Washington 98504-0002 · (360) 902-4111 · [www.governor.wa.gov](http://www.governor.wa.gov)*

May 6, 2009

To the Honorable President and Members,  
The Senate of the State of Washington

Ladies and Gentlemen:

I have approved, except for Section 18, Engrossed Substitute Senate Bill 5288 entitled:

"AN ACT Relating to the supervision of offenders."

I am vetoing the emergency clause in Section 18. I have spoken with the Department of Corrections, and have been informed that they need time to implement the changes of the bill. They have begun preparing and will be ready to implement the changes August 1, 2009, but are not able to make these changes immediately. The elimination of the emergency clause will not affect the fiscal assumptions of the bill.

For this reason, I have vetoed Section 18 of Engrossed Substitute Senate Bill 5288. With the exception of Section 18, Engrossed Substitute Senate Bill 5288 is approved.

Respectfully submitted,

/s/  
Christine O. Gregoire  
Governor

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

---

IN RE THE PERSONAL RESTRAINT PETITION OF	)	
	)	
	)	
JEFFREY BROOKS,	)	NO. 80704-3-I
	)	
	)	
Petitioner.	)	

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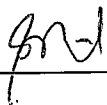
**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 11<sup>TH</sup> DAY OF MAY, 2009, I CAUSED THE ORIGINAL **PETITIONER'S ANSWER TO BRIEF OF AMICUS CURIAE** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] JAMES WHISMAN	(X)	U.S. MAIL
KING COUNTY PROSECUTING ATTORNEY	( )	HAND DELIVERY
APPELLATE UNIT	( )	_____
KING COUNTY COURTHOUSE		
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
[X] HILARY THOMAS	(X)	U.S. MAIL
DAVID MCEACHRAN	( )	HAND DELIVERY
WHATCOM COUNTY PROSECUTING ATTORNEYS	( )	_____
311 GRAND AVENUE		
BELLINGHAM, WA 98225		
[X] JEFFREY BROOKS	(X)	U.S. MAIL
634437	( )	HAND DELIVERY
AIRWAY HEIGHTS CORRECTIONS CENTER	( )	_____
PO BOX 2049		
AIRWAY HEIGHTS, WA 99001		

**SIGNED** IN SEATTLE, WASHINGTON, THIS 11<sup>TH</sup> DAY OF MAY, 2009.

X \_\_\_\_\_



**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, Washington 98101  
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